SUPREME COURT OF THE UNITED STATES.

No. 60.

CHRISTOPHER GRAHAM, PLAINTIFF IN ERROR,

VERSUS

THE BANK OF THE COMMONWEALTH OF KENTUCKY.

ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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Pleas before George Robinson, Chief Justice of Kentucky, and Joseph R. Underwood and Samuel S. Nicholas, Judges, composing the Court of Appeals in the State of Kentucky, on the 6th day of October 1832.

Be it remembered that heretofore, to wit, on the 5th day of October, 1831, the following appeal was filed in the office of the court of appeals, to wit:

Pleas before the Hon. William L. Kelly, judge of the mercer circuit court, at the court-house in Harrodsburg, on the 15th day of
Preamble. April, 1831, in a certain action of petition for debt in said court, wherein the president and directors of the Bank of the Commonwealth of Kentucky are plaintiff's, and Christopher Graham is defendant.

Be it remembered that heretofore, to wit, on the 14th day of March,
Record from circuit court. 1831, the plaintiffs, by their attorney, filed their petition herein, in the words and figures following, to wit:

STATE OF KENTUCKY, *Mercer Circuit, Sct.*

The president and directors of the Bank of the Commonwealth of Kentucky, plaintiffs, state that they hold a note upon the defendant, Christopher Graham, in substance as follows, to wit:

One hundred and eighty days after date I promise to pay the president and directors of the Bank of the Commonwealth of Kentucky,
Petition. or order, four thousand eight hundred and sixty-one dollars, negotiable and payable at the Branch Bank at Harrodsburg, for value received, witness my hand this 1st day of June, 1830.

C. GRAHAM.

Yet said debt remains unpaid; wherefore, they pray judgment for their debt aforesaid, and damages for the detention of the same, together with their costs &c., &c.

THE PRESIDENT, &c.
WORTHINGTON and
ANDERSON,
their Attorneys.

Thereupon, the plaintiffs ordered the following summons to be issued, to wit:

The Commonwealth of Kentucky to the sheriff of Mercer county greeting: We command you to summon Christopher Graham to ap-
Summons. pear before the judge of the Mercer circuit court, in the town of Harrodsburg, on the third day of the next April term of our said court, to be held for said circuit, to answer the demand of the president and directors of the Bank of the Commonwealth of Kentucky, exhibited against him by way of petition for debt, and have then there this writ. Witness, Phillip T. Allen, clerk of our said court, at the court-house aforesaid, the 14th day of March 1831, and in the 39th year of the Commonwealth.

PHIL. T. ALLEN.

Sheriff's return. Upon the foregoing summons, the sheriff returned—"Executed on Christopher Graham, on the 16th day of March, 1831.

BASIL PRATHER, D. S. for
WILLIAM GUTHRIE. S. M. C.

And then, to wit, at a circuit court held for the circuit of Mercer at the court-house in Harrodsburg on the fifteenth day of April, 1831, it being
Appearance of parties. Friday. This day came the parties aforesaid, by their attorneys, and the defendant, by his attorney, filed his pleas No. 1 and 2, herein, to which pleas the plaintiff's attorney filed the demurrers, to which demurrers the defendant's attorney filed *their* joinders, and the argument of the attorneys for the parties being heard, touching the law arising on the demurrers aforesaid, its eems to the court that the law is for the plaintiff's.

It is, therefore, considered by the court, that the demurrers aforesaid be sustained, and thererefore, on motion of the plaintiffs, by their attorney (and the defendant offering no other plea in bar.)

It is considered by the court that the plaintiffs do recover against the said defendant, four thousand eight hundred and sixty-one dollars, the debt in the petition mentioned, with interest thereon to be computed after the rate of six per centum, per annum, from the 1st day of December, 1830, until paid, and also their costs by them this behalf expended.

And it is agreed, by the parties in this cause, that the several acts of the Legislature referred to in the pleas, be considered as much a part of the pleas as if they were copied at length, and that they shall be so considered by all courts before whom this cause may come to be decided. It is also agreed that the clerk, in making out the record, need not copy said acts, but that the courts before whom the cause may come to be tried, shall consider the said acts as contained in the printed acts as part of the pleas for every purpose as fully as if said acts were copied at large in said pleas: and it is further agreed, that the blanks in the pleas herein, may be filled up at any time before this cause is decided on by the appellate court.

The pleas referred to in the foregoing order, are in the words and figures following, to wit:

The defendant, by his attorney, comes and defends the wrong and injury, when, &c., and craves the oyer of the note in the petition mentioned, which is read to him in the words and figures, following, to wit: Plea No. 1.
(see first page of this record:) and says the plaintiff, *his* ought not to have, and maintain in virtue of said note, because he says the note aforesaid, was executed on no other, or further consideration, than for the renewal and in substitution of other notes which had been previously executed to the plaintiffs, by David Sutton and Joseph Morgan, in which they procured one hundred and twenty days after date to pay to the plaintiffs dollars. negotiable and payable at the Branch Bank of the Commonwealth of Kentucky, at Harrodsburg. And the defendant, in fact, avers, that previous to the execution of the last mentioned notes, by the said David Sutton and Joseph Morgan, there was established by an act of the Legislature of the Commonwealth of Kentucky, in the name, and on behalf of the said Commonwealth, a bank, the capital stock of which was, by the said act, to consist of two millions of dollars, and to belong exclusively to the said Commonwealth, but which said capital stock, the defendant further avers, was merely nominal, and no part thereof, ever in fact, received by the said bank. That, by the provisions of said act, the president and directors of said bank, and their successors in office, were declared and made a corporation and body politic in law and fact by name and style of "The president and directors of the Bank of the Commonwealth of Kentucky." That also, by the said act, the president and directors of the bank, aforesaid, were illegally, and, contrary to the constitution of the United States, empowered and authorized for, and on behalf of the said Commonwealth, and upon her credit, to make notes or bills of credit to an amount, not exceeding millions of dollars, to wit: Bills or notes signed by the president and countersigned by the principal cashier, promising the payment of money to any person or persons, his, her, or their order, or bearer; and the said bills or notes, when so made illegally, and, in violation of the said constitution of the United States, to emit, issue, and circulate through the community, for its ordinary purposes, as money; that under the authority of the said act of the

Legislature, and in violation of the said constitution of the United States the said president and directors of the bank aforesaid, before the day of the date of the notes as aforesaid, which were executed by the said David Sutton and Joseph Morgan and for the renewal, and in substitution whereof, the note in the petition mentioned, was executed, had for, and on behalf of the said Commonwealth of Kentucky, and on her credit, made various bills of credit, to wit: notes or bills, in amount, of various denominations, from one to one hundred dollars; which said notes or bills were signed by the said president of the bank, aforesaid, and countersigned by the principal cashier; therein and thereby promising to pay to the person in each note or bill mentioned, or bearer, on demand, the amount therein mentioned; and that, for the purpose of circulating the said notes or bills through the community, for its ordinary purposes, as money, the said president and directors afterwards, to wit: on the day of at their office of discount, &c., at Harrodsburg, did, for and on behalf of the said Commonwealth, and for her benefit and on her credit, illegally, and contrary to the said constitution of the United States, emit, and issue the said notes or bills of credit, so made as aforesaid, by the president and directors of said bank, amounting in the whole to dollars, by loaning at interest, at the rate of six per centum, per annum, the said last mentioned notes or bills, and delivering the same to to the aforesaid David Sutton and Joseph Morgan; and the defendant, in fact, avers, that the only consideration for which the said notes aforesaid, executed by the said David Sutton and Joseph Morgan by the plaintiffs, who in fact, are the president and directors of said bank. Therefore, the defendant says, that the consideration of the notes as aforesaid, executed by the said Sutton and Morgan was wholly and entirely illegal, invalid, and in violation of the consideration of the note in the petition mentioned, which was as aforesaid, executed as a renewal and in substitution of said notes, was else wholly and entirely illegal, invalid, and insufficient, &c., and this he is ready to verify. Wherefore, he prays judgment, &c.

OWSLEY & CUNNINGHAM,
for Defendant.

Plea No. 2.

The defendant, by his attorney, comes and defends the wrong and injury, when &c., and claims oyer of the note in the petition mentioned, which is read to him in the words and figures following, to wit: (which is found on 1st page of this record:) and says the plaintiff, *his* action in virtue of said note, ought not to have and maintain, because he says the said note was executed on no other or further consideration, than for the renewal and in substitution of other notes, which had been before that time executed to the plaintiff, by David Sutton and Joseph Sutton, in which and by which, said notes, last mentioned, they procured, one hundred and twenty days after date to pay the plaintiffs the sum of dollars negotiable and payable at the Branch Bank of the Commonwealth at Harrodsburg. And the defendant, in fact, avers, that previous to the executing of the last mentioned notes, by the said Sutton and Morgan, the Legislature of the Commonwealth of Kentucky had passed the following acts, to wit: an act entitled an Act (here insert the title of the act by which the bank was established;) and an act (here insert the title of an act in relation to the bank which passed at the same session,) which said acts are in the words and figures following, to wit: (here copy both of the acts at length, in the order they were enacted.) The defendant also avers, that, at the same session, to

wit: on the 25th December, 1820, the Legislature passed another act, entitled an act, (here give the title of the act concerniug executions which passed at the session of 1820,) by which said last act it was enacted by the Legislature that, (here copy the act which passed the 25th of December, 1820, concerning executions.)

The defendant also avers, that by the act first aforesaid, there was established in the name, and on behalf the Commonwealth of Kentucky, a bank, the capital stock of which was to be two million of dollars, and to belong exclusively to the Commonwealth; but which said capital stock, the defendant further avers, was merely nominal, and no part thereof ever, in fact, received by the said bank, that by authority of the said act, the president and directors of the said bank, and their successors in office, were made a corporation and body politic in law and fact, by the name and style of "the president and directors of the Bank of the Commonwealth of Kentucky." That the president and directors aforesaid, were, by the provisions of the two first acts mentioned, as aforesaid, were illegally and contrary to the constitution of the United States, empowered and authorized for and on behalf of the said commonwealth, and upon her credit, to make notes and bills of credit, to wit: bills or notes signed by the president and countersigned by the principal cashier, promising the payment of money to any person or persons, his, her or their order, or bearer, and the said bills or notes, when so made, illegally, and in violation of the constitution of the United States, to emit, issue, and circulate through the community for its ordinary purposes, as money. That, under the authority of the acts aforesaid, and in violation of the constitution of the United States, the said president and directors of the bank aforesaid, before the day of the date of the notes, aforesaid, which were executed by the said Sutton and Morgan, and for the renewal, and in substitution whereof, the note, in the petition, mentioned, was executed, had for and on behalf of the said Commonwealth of Kentucky, and on her credit made various bills of credit, to wit: notes or bills, in amount, of various denominations, from one to one hundred dollars, which said notes or bills were signed by the president of said bank, and countersigned by the principal cashier; therein and thereby promising the person in each note or bill, mentioned, or bearer on demand, the amount therein mentioned in money, and that for the purpose of circulating said notes or bills through the community for its ordinary purposes, as money. The said presdent and directors afterwards, to wit: on the day of at their office of discount, &c. at Harrodsburg, did for and on behalf of the said commonwealth, and for her benefit and on her credit, illegally and contrary to the constitution of the United States, emit, issue and circulate the said notes or bills of credit, so made as aforesaid, by the president and directors of the said bank, amounting in the whole to dollars, by loaning at interest, at the rate of six per centum, per annum, the said last mentioned notes or bills, and delivering the same to the aforesaid Sutton and Morgan, and the defendent in fact, avers, that the only consideration for which the said notes as aforesaid, executed by the said Sutton and Morgan, was executed by them, was the unlawful loan and emission of the said bills of credit, as aforesaid, to the said Sutton and Morgan, by the plaintiffs, who, in fact, are the president and directors of the said bank: wherefore, the defendant says, that the consideration of the notes, as aforesaid, executed by the said Sutton and Morgan, wholly and entirely illegal, invalid, and in violation of the constitution *of the constitution*

of the United States, and that the consideration of the note, in the petition mentioned, which was as aforesaid, executed as renewal, and in substitution of said notes, was also, wholly, and entirely illegal, invalid, and insufficient, &c., and this he is ready to verify, wherefore, he prays judgment, &c.

OWSLEY & CUNNINGHAM,
for Defendant.

Demurrer to Pleas.

The plaintiffs, by their attorney, come and for replication to defendant's 1st and 2d pleas herein, say *precludi non.* Because they say that the matters and things contained in said pleas, are insufficient in law to bar or preclude the plaintiffs from having and maintaining their action aforesaid, and this they are ready to verify, wherefore, &c.

GREEN & ANDERSON, P. Q.

Joinder.

And the defendant comes and says, that the matters in his 1st and 2d pleas herein contained, are good and sufficient in law to bar the plaintiffs' action, and this he is ready to verify, wherefore.

OWSLEY & CUNNINGHAM, P. Q,

Demurrer to 1st plea.

The plaintiffs, by their attorneys, come and for replication to the defendant's first plea, herein say *precludi non.* Because they say, that the matters and things contained in the said plea, are insufficient in law to bar or preclude the plaintiffs from having and maintaining their action aforesaid. And this they are ready to verify, wherefore, &c.

ANDERSON, &c., P. Q.

Demurrer to plea 2.

And for replication to the defendant's 2d plea, herein they say *precludi non.* Because they say, that the matters and things therein contained are insufficient in law to bar or preclude the plaintiffs from having and maintaining their action aforesaid. And this they are ready to verify, wherefore, &c.

ANDERSON, P. Q.

Joinder to demurrer to 1st plea.

And the defendant, by his attorney, says that the matters and things in his plea by him first pleaded, are sufficient in law to bar and preclude the plaintiff from having and maintaining his action aforesaid. And this he is ready to verify; wherefore he prays judgment, &c.

And 2d plea.

And the defendant, by his attorney, says, that the matters and things in his second plea, by him pleaded, are sufficient in law to bar the plaintiffs from having and maintaining *his* action aforesaid. And this he is ready to verify; wherefore, he prays judgment, &c.

Appeal granted.

Again, at another day of said term, to wit: on the 15th day of April, 1831, it being Friday, on motion of the defendant, by his attorney, an appeal is granted him to the honorable the court of appeals, on his executing bond in the clerk's office, in the penal sum of ten thousand dollars with David Sutton, his security, within twenty days conditioned as the law directs.

The appeal bond referred to, in the foregoing order is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, Christopher Graham and David Sutton, are held and firmly bound unto the president and directors of the Bank of the Commonwealth of Kentucky, in the penal sum of ten thousand dollars, to the payment of which, well and truly to be made to the president, &c. of said bank, we bind ourselves, our heirs, &c. jointly, and severally firmly by these presents, sealed with our seals, and dated this 2d day of May, 1831.

The condition of the above obligation is such, that whereas the above bound Christopher Graham has prayed for and obtained from the honorable the Mercer circuit court, an appeal from the judgment of the said court, rendered in favor of the said president and directors of the Bank of the Commonwealth of Kentucky, against said C. Graham, for four thousand eight hundred and sixty-one dollars, with interest and costs, to the honorable the court of appeals.

Now, if the said Graham shall duly prosecute his appeal herein, then the above obligation to be void, else to remain in full force and virtue.

CHRISTOPHER GRAHAM. [SEAL.]
D. SUTTON. [SEAL.]

Witness: PHIL. T. ALLEN, *Clerk.*

STATE OF KENTUCKY, *Mercer Circuit*, } *Sct.*

I, Phillip T. Allen, clerk of the circuit court aforesaid, do certify that the foregoing seventeen pages contain a full and complete transcript of the proceedings in the suit aforesaid, in my office.

Given under my hand, this 14th day of May, 1831.

PHIL. T. ALLEN.

The plaintiff in error filed the following errors, to wit:

GRAHAM
against
THE BANK OF THE COMMONWEALTH OF KENTUCKY.

Errors.

The plaintiff in error says that, in the foregoing record and proceedings, errors have been committed to his prejudice in the following particulars, to wit:

1. The court erred in sustaining the demurrer to the first plea, by him pleaded.
2. The court erred in sustaining the demurrer to the second plea, by him pleaded.
3. The judgment of the court on the demurrer to each plea, and in rendering final judgment against plaintiff in error, is erroneous and illegal.

OWSLEY.

Appeal heard.

At a court of appeals continued and held for the State of Kentucky, on the 5th day of Oct., 1832, came the parties by their attorneys, and this cause came on and was heard; but the court not being sufficiently advised, took time.

And afterwards, to wit: on a subsequent day of the term and year last aforesaid, (being the 6th day of October, 1832,) came the parties aforesaid, by their attorneys, and the court being now sufficiently advised of, and concerning the premises, it seems to them that there is no error in the judgment.

Judgment.

It is therefore considered by the court that the judgment of the circuit court be *affirmed*, and that the appellees recover of the appellant, ten per cent. damages on the amount thereof; which is ordered to be certified to said court.

And it is further considered by the court that the appellees recover against the appellant, their costs herein expended.

STATE OF KENTUCKY, *Sct.*

I, Jacob Swigert, clerk of the court of appeals of said State, do certify that the foregoing twelve pages contain a true, full, and complete transcript of the record and proceedings had in the case therein mentioned.

In testimony whereof, I have hereto set my hand, and affixed the seal of [SEAL.] office, this 29th of October, 1834, and in the 43d year of the Commonwealth. J. SWIGERT, C. C. A.

Fees and tax, $5.

Allowed by John McLean Justice Sup. Court United States.

THE UNITED STATES OF AMERICA.

The President of the United States of America, To the Judges of the Court of Appeals in and for the State of Kentucky, greeting:

That because in the record and proceedings, and also in affirming a judgment of the Mercer circuit court, wherein the president and directors of the Bank of the Commonwealth of Kentucky, were plaintiffs, and Christopher Graham was defendant, and by the affirmance of said judgment, manifest error hath intervened, to the great damage of the said Christopher Graham, in his complaint hath been alleged, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice be done to the parties. In this behalf, you are hereby commanded, that if a judgment be given, then, under your seal, you distinctly and openly send the record and proceedings in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the Chief Justice and Associate Justices of the Supreme Court of the United States, on the second Monday in January next in the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid, being inspected, that they may cause to be done thereupon, what of right ought to be done.

Witness the honorable John Marshall, Chief Justice of the Supreme Court, at Washington this 26th day of November, A. D. 1834, and of our Independence the 59th.

Attest: JOHN H. HANNA, C. C. C. K. D.

To the President and Directors of the Bank of the Commonwealth of Kentucky.

Whereas a writ of error hath been issued by the clerk of the seventh circuit court of the United States of America, in and for the Kentucky district, on behalf of Christopher Graham, returnable to the Supreme Court of the United States, on the second Monday in January next, to reverse a judgment decided in the court of appeals for the State of Kentucky, wherein the said Christopher Graham was appellant, and the said president and directors of of the Bank of the Commonwealth of Kentucky, were appellees.

These are, therefore, to cite and command you to be and appear in the Supreme Court of the United States, at the city of Washington, on the day aforesaid, then and there to hear the errors assigned for the reversal of the said judgment, and to be heard, if any thing you have to say upon the said writ of error.

Witness my hand as an Associate Justice of the Supreme Court of the United States, this 27th day of November, A. D. 1834, and in the 59th year of the Independence of the United States.

JOHN McLEAN.

Executed on Henry Wingate, president of the Bank of the Commonwealth.

December 9th, 1834 G. E. RUSSELL, D. M. K. D.

Service $2.

934.

SUPREME COURT OF THE UNITED STATES.

No. 61.

SARAH BOONE, ET AL, APPELLANTS,

VERSUS

WILLIAM CHILES, ET AL.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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Pleas before the honorable John McLean and Thomas B. Monroe, judges of the seventh circuit court of the United States of America, in and for the district of Kentucky, held at the capitol in the town of Frankfort, at the May term of said court, in the year eighteen hundred and thirty-four.

BOONE'S HEIRS *vs.* CHILES, et al.

Be it remembered, that heretofore, to wit, on the 25th day of January, in the year 1823, came Thomas Boone's heirs, by their attorney, into the clerk's office of the court aforesaid, and filed the following bill in chancery, against William Chiles and others, to wit:

[*Bill.*]

To the honorable the circuit court of the United States for the district of Kentucky, in chancery sitting:

Thomas Boone, a citizen of the State of Pennsylvania complaining, sheweth—that a certain Reuben Searcy being entitled to a settlement of 400 acres of land on Stoner, in the present county of Bourbon, and a pre-emption of 1,000 acres adjoining, in due form of law, obtained the certificate of the commissioners accordingly, and engaged a certain John Martin to perfect the title for one half the land; that the said Searcy, on the 24th day of September, 1781, for a valuable consideration, sold seven hundred acres, being his half of the settlement and pre-emption aforesaid, to a certain William Hoy, and executed his bond for a conveyance accordingly, and likewise assigned to Hoy the plat and certificate of survey, which enabled Hoy, on the day of July, 1785, to perfect the title to the whole tract in his own name, but Hoy had previously, to wit, on the day of December, 1781, assigned Searcy's bond to a certain George Boone, who, on the day of April, 1785, assigned it to your orator; thus your orator became invested with a clear equity to one half of the said settlement and pre-emption, and Martin and his alienees have long enjoyed in severalty their half, which your orator does not wish to invade, but is content to hold the parcels hereafter mentioned as decreed to the defendant Chiles. Your orator would further state that—has never in any shape divested himself of this equity. It is true, that on the thirteenth day of November, 1802, he gave to a certain Hezekiah Boone a written assurance that your orator would convey to him, provided he should conclude to buy, and should, within four years from that date, pay to your orator seven hundred pounds, and a fund was mentioned out of which it was contemplated to pay the price. But Hezekiah Boone declined the purchase—did not pay one cent of the price, and devoted the contemplated funds to other purposes. Thus that arrangement long ceased to operate. But a certain William Chiles, Hezekiah Boone, George Boone, Nicholas Smith, jr. Nicholas Smith, sen. Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Commins, all of whom are citizens of Kentucky and made defendants to this bill, except the said George Boone, who has since departed this life, combining, &c. to defraud and injure your orator in this behalf, and deprive him of his title, and de-

tain from him the use of his land aforesaid, the said Chiles and Boones on the day 18 commenced their suit in chancery, in the Bourbon circuit court, upon their bill, filed in the name of themselves and your orator, against the heirs of the said Hoy, alleging the title from Searcy to your orator as already set forth, and charging that your orator had sold to the said Hezekiah, and that he had sold to the said Chiles, and that your orator and the other complainants desired a title to be made to the said Chiles, praying that the heirs of Hoy should convey, &c. &c. and thereupon such proceedings were had that at the term of that court a decree was accordingly pronounced, and in pursuance of that decree and the order of the said court, a conveyance was made to the said Chiles, by a commissioner appointed by the said court, of two parcels of the said settlement and pre-emption of the said Chiles, having at the time full knowledge of the purchase of your orator, and of the conditional character of his contract with Hezekiah, and that those conditions and terms had never been fulfilled on the part of Hezekiah, the said Martin and his alienees holding the residue as their share, all which will more fully appear by reference to the bill, exhibits, decree and deed remaining of record in the said court to a true transcript of which your orator refers as a part of this bill. He would not, however, be understand to admit as genuine or correct, an instrument on file in that cause, purporting to be the agreement between your orator and Hezekiah Boone; on the contrary, he believes the original in possession of Chiles, and withheld for the purpose of imposition and in terms different.

Your orator distinctly charges that the suit aforesaid was fraudulently instituted—prosecuted without his knowledge or approbation—that Chiles has no just claim, nor did your orator ever assent to a decree or conveyance in his favor, and that he never did sell or convey to any person any part of that land, nor had either of the Boone's authority from him on this subject, except that George was authorized by him to obtain a title from Hoy to your orator. And the defendant Chiles not only refuses to convey to your orator, altho' perfectly apprized of his equity, but has even made some engagement to maintain the defendants, Smeltzer, Smiths, Evalt, Commins and Baylor, in detaining the possession and enjoying the profits for a long time past, still refusing to surrender.

All which actings, &c. are contrary to equity, &c. in tender consideration whereof, &c. &c. to the end, therefore, that the defendants may true and perfect answer make to all and singular the premises aforesaid, as fully as if again repeated, &c., more especially that the defendant Chiles may produce the bond from Searcy to Hoy, or say what has become it, and why he destroyed it or lost it, &c.

You orator prays your honor by your decree, to compel the defendant Chiles, or such of the defendants as now hold the title, to convey to him the tract described by the deed under the decree to Chiles. That the defendants or those who have received them may *may* account for the rent and profits, and that you grant such other and further relief as his case may require. May it please your honors to grant your subpœna, &c. &c.

CRITTENDEN & HAGGIN.

Upon which bill issued the following bill in chancery, to wit:

[*Chancery Subpœna.*]

[L. S.] The United States of America, to the Marshal of the Kentucky district, greeting:

You are hereby commanded to summon William Chiles, Hezekiah Boone, Nicholas Smith, sen. Nicholas Smith, jr. Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt and Joseph Commins, all citizens of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by Thomas Boone, a citizen of the State of Pennsylvania; and this they shall in no wise omit, under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, John Marshall, esq. chief justice of tbe United States, hath caused the seal of our said court to be hereunto affixed, this 25th day of January, 1823, and of our independence the 47th.

Attest: JNO. H. HANNA, C. C. C. K. D.

Bourbon county, Kentucky, sct.

Personally appeared before me, the undersigned, a justice of the peace for said county, Wesley Williams and Thomas Ducker, and states on oath, that he, the said Williams, did, on the 29th day of January last, deliver a true copy of the within subpœna to George W. Baylor, and on the 31st January last to Nicholas Smith, sen. Nicholas Smith, jr. Jacob Smeltzer, Jacob Smith, John Evalt and Joseph Commins, and on the 14th February inst. to Hezekiah Boone; and said Thomas Ducker states on oath that he delivered a true copy of the written subpœna to William Chiles on the 13th inst. Given under my hand as aforesaid, this 18th day of February, 1823.

HENRY TIMBERLAKE.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of March and year 1823, came the complainant, by his attorney, and filed the following bill to stay waste, to wit:

[*Bill to stay waste.*]

To the honorable circuit court of the United States for the district of Kentucky, in chancery sitting:

Thomas Boone, a citizen of the State of Pennsylvania, complaining, sheweth, that he has heretofore instituted a suit in chancery and filed his bill in your honorable court *court*, against Wm. Chiles, Joseph Commins, Jacob Smith and John Evalt and others, all citizens of the State of Kentucky, to recover from them a certain tract or parcel of land lying and being in the district aforesaid. Your orator does believe that he is justly and equitably entitled to said land, as is stated in said bill, which the defendants thereto have not answered; the process has been served on them or at least on said Jacob Smith. Your orator refers to said bill, a copy of which is herewith exhibited, and makes the same a part of this bill. He states that said Jacob Smith, though well apprized of the pendency of said suit, brought by your orator for the re-

covery of said land, availing himself of the possession of a parcel of said land which he has unrighteously and unequitably obtained, has committed great waste by cutting down, carrying off and selling large quantities of the wood and timber that grew on the said land so in controversy and in his possession as aforesaid, and your orator cannot doubt but that he will continue so to commit waste, and to cut down and destroy the valuable wood and timber growing on said land, and thereby greatly impair and diminish its value, unless restrained and prevented from so doing. Your orator therefore prays, that said Jacob Smith may be made defendant hereto, &c. and be enjoined from the commission of any further waste, and that such order may be made on the subject as is conformable to equity, &c., and as in duty bound he will ever pray, &c.

United States of America, Kentucky district, sct.

This day Boone Ingles, agent for the complainant, came before me and made oath, that he doth verily believe the facts stated in the within bill are true. March 26th, 1823.

ROBT. TRIMBLE, J. K. D.

United States of America, Kentucky district, sct.

Thomas Boone against William Chiles and others, upon motion for an injunction to stay waste. It is ordered that an injunction be awarded the complainant, against the defendant Jacob Smith, to enjoin and restrain him from committing waste upon the premises in the within bill, mentioned by cutting and carrying off wood and timber, or otherwise agreeably to the prayer of the bill; and that the clerk issue process accordingly. Given under my hand, this 26th day of March, 1823.

ROBERT TRIMBLE, J. K. D.

Upon which bill issued the following subpœna in chancery, to wit:

[L. s.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Jacob Smith, a citizen of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against him, &c. by Thomas Boone, a citizen of the State of Pennsylvania; and this he shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ. In testimony whereof, John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 29th day of March, 1823, and of our independence the forty-seventh.

Attest: JNO. H. HANNA, C. C. C. K. D.

The defendant is hereby enjoined and restrained from committing waste on the land-controversy between the parties in this

cause, by cutting and carrying off wood or timber, or otherwise until the matter can be heard in equity.

Attest: JNO. H. HANNA, C. C. C. K. D.

Executed the 31st day of March, 1823.

CHAPMAN COLEMAN, M. D. K.

[*Bill to stay waste.*]

To the honorable circuit court of the United States for the district of Kentucky, in chancery sitting:

Thomas Boone, a citizen of the State of Pennsylvania, complaining, sheweth, that he has heretofore instituted a suit in chancery, and filed his bill in your honorable court against William Chiles, Joseph Commins, and John Evalt and others, all citizens of the State of Kentucky, to recover from them a certain tract or parcel of land lying and being in the district aforesaid; your orator does believe that he is justly and equitably entitled to said land, as is stated in said bill which the defendants thereto have not answered, though process has been served on them, or at least upon the said Commins and Evalt; your orator refers to said bill, a copy of which is herewith exhibited, and makes the same a part of this bill. He states *he states* that said Commins and Evalt, though well apprised of the pendency of said suit brought by your orator for the recovery of said land, availing themselves of the possession of parcels of said land which they have unrighteously and unequitably obtained, have committed great waste by cutting down and carrying off, and selling large quantities of the wood and timber that grew on the said lands so in controversy, and in their possession as aforesaid, and your orator cannot doubt but that they will continue so to commit waste, and to cut down and destroy the valuable wood and timber growing on said land, and thereby greatly impair and diminish its value, unless restrained and prevented from so doing. Your orator therefore prays, that said Commins and Evalt may be made defendants hereto, &c. and be enjoined from the commission of any further waste, and that such order may be made on the subject as is conformable to equity, &c.; and, as in duty bound, he will ever pray, &c.

United States of America, Kentucky district, sct.

Boone Ingles this day came before me, and made oath that the facts set forth in the foregoing bill are in substance true. March 14, 1823.

ROB'T TRIMBLE.

United States of America, Kentucky district and seventh circuit, sct.

Thomas Boone, complainant, against Joseph Commins and John Evalt.—On motion for an injunction to stay waste.

It is ordered, that an injunction be awarded the complainant against the defendants to stay, and enjoin them from committing waste upon the land in the foregoing bill mentioned by cutting and removing off from the said land wood and timber or otherwise, agreeably to the prayer of the bill; and the clerk is directed to issue the proper process accordingly. Given under my hand at my chamber, this 14th of March, 1823.

ROB'T TRIMBLE, J. K. D.

Upon which bill issued the following subpœna in chancery, to wit:

[L. S.] The United States of America, to the marshal of Kentucky district, greeting:

You are hereby commanded to summon Joseph Commins and John Evalt, citizens of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them by Thomas Boone, a citizen of the State of Pennsylvania: and this they shall in nowise omit under the penalty of four hundred dollars each; and have then there this writ. In testimony, John Marshall, esq., chief justice of the United States, hath caused the seal of our said court to be hereunto affixed, this 24th day of March, 1823, and of our independence the 47th.

Attest: JNO. H. HANNA, C. C. C. K. D.

The defendants are hereby restrained and enjoined from committing waste upon the tract of land claimed by the complainant, and described in his original bill, by cutting down and carrying away the timber from said land, until the matter can be heard in equity.

Attest: JNO. H. HANNA, C. C. C. K. D.

Marshal's return, to wit:

Executed on defendant Commins; and left at defendant Evalt's house with his daughter, he being from home, a true copy of the within writ and the endorsement thereon. March 31st, 1823.

CHAPMAN COLEMAN, M. D. K.

[*Leave to amend bill.*]

And afterwards, to wit, at the May term of the court aforesaid, in the year 1823, on motion of the complainant aforesaid, by his attorney, leave is given him to amend his bill by inserting the following words on the third page: "The said Chiles having, at that time, full knowledge of the purchase of your orator, and of the conditional character of his contract with Hezekiah; and that those conditions and terms has never been fulfilled on the part of Hezekiah."

[*Leave to take depositions.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, (to wit, May term 1823,) came the complainant aforesaid, by his counsel, leave is given him to take the depositions of Hezekiah Boone and Nicholas Smith, sen. before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same, subject however to all legal exceptions.

And afterwards, at rules held as aforesaid, in the month of June and year aforesaid, (to wit, 1823, until which time this cause was continued on the rules,) came the defendant Hezekiah Boone, by his counsel, and filed his answer (to the bill of the complainant) herein, to wit:

[*Hezekiah Boone's answer.*]

The separate answer of Hezekiah Boone, to a bill in chancery exhibited against him and others (by Thomas Boone) in the circuit court of the United States for the district of Kentucky.

This respondent, saving and reserving to himself every benefit of exception to many errors, untruths, &c. in the complainant's bill set forth for answer to so much of said bill as he is advised is material for him to answer, saith that it may be true to the statements in the bill about Searcy's obtaining a certificate for a settlement and pre-emption; and that the sale took place as stated for the seven hundred acres to William Hoy; and that the grant *enumerated* to said Hoy for the 1,400 acres; and that Hoy made the transfer to the seven hundred acres to George Boone, and from him to the complainant: but this respondent most positively denies the following statements or charges made in the complainant's bill, viz. that he has never parted or divested himself of his equity: this respondent charges that the complainant did, by his contract under his hand and seal, and dated upon the 30th day of November, 1802, (which contract is made part of this answer,) and for a fair and valuable consideration, divest himself of all the equity he had in and to said land; that the contract above described, shows for itself, and upon it no comment is necessary to be made. This respondent also denies the charge of the want of consideration in the complainant's bill; this respondent also denies the recision of said contract, or that he, at any time in the four years, declined the purchase; he also denies that he ever received one cent out of the fund set apart in said contract to pay the seven hundred pounds, or that he, in any way whatever, devoted one cent of said funds to other purposes, or that the arrangement ever failed; he therefore calls upon the complainants for full proof of all those allegations in his bill set forth. This respondent would further state, that the fund out of which the said 700 pounds was to be raised (viz.) out of land sold and land to be sold, as mentioned in said contract, was more than sufficient to meet the whole amount, exclusive of Josiah Boone's share; and that the complainant was authorized fully to sell and collect the said fund, and was to account for any balance which might be found in favor of your respondent. This respondent would further charge that he sold a farm to the father of the complainant in his life time, and took from him bonds to the amount of four hundred pounds, which has been due for 50 or sixty years; all which bonds were, upon settlement, left in the hands of the complainant; that the most of the money was paid, but that one entire bond of £54 was not discharged, nor no part of the interest, as also, £25 in gold; a part of a legacy left this respondent by his deceased brother, Jeremiah Boone, which was also left in the hands of the complainant; which sum remained in the hands of the complainant's father at his death; and that the complainant received of the said estate a large fund, out of which these sums and interest ought to be paid, which sums would amount to something like two hundred and seventy-five pounds, which was also left as an addition fund for said purpose. This respondent therefore considers the whole of the seven hundred pounds has been paid many years, as the complainant never has rendered an account

for one cent, nor ever made a demand for any balance which might have been due him upon settlement, which this respondent has always been ready and willing to pay, and is yet willing if the complainant will settle all those accounts, and strike a balance, should it be in favor of the complainant, to pay it upon demand; and this respondent would state that he did, within the four years, make his election to take the land, and gave notice of the same, by letter, to the complainant. This respondent conceives he has fully answered the complainant's bill; he prays to be dismissed, with his costs.

HEZEKIAH BOONE.

Woodford county, State of Kentucky, sct.

This is to certify that the within named Hezekiah Boone personally appeared before me, William Christopher, one of the commonwealth justices of the peace in and for the aforesaid county, and made oath that the facts and statements made in the within answer are true, so far as relates to his own knowledge, and so far as relates to the information of others, he believes to be true. Given under my hand and seal, this 28th of April, 1823.

WM. CHRISTOPHER, J. P. [L. S.]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of November, and year 1823, until which time this cause was continued on the rules) came the defendant, Chiles, by his counsel, and filed his answer herein, which is as follows, to wit:

[*William Chiles' answer.*]

The separate answer of William Chiles, to a bill in chancery exhibited against him, and others, by Thomas Boone, in the circuit court of the United States, for the district of Kentucky, for to said bill, says: That it is true Reuben Searcy was entitled to a settlement and pre-emption, and engaged a John Martin to perfect the title for one half, and did in September, 1781, sell and give his bond for half thereof to William Hoy; that Hoy obtained the patent in his own name, and assigned Searcy's bond, by special assignment, to George Boone, who assigned it to the complainant, as stated in the bill; but is not true that Martin and his alienees ever enjoyed any part thereof, unless Hoy was his alienee, which he believes to be the fact, as he is informed, and believes, that Hoy purchased of Martin his half, and obtained the patent; but this defendant denies that all the fourteen hundred acres ever was possessed by any person holding under Hoy's title; on the contrary, a great proportion is possessed under the claims of George Ruddle, John Ruddle, the former an elder patent, and both have held possession for thirty years adversely to Hoy's title; also, part is held under the claims of John Hingston, and a claim in the name of Flournoy, so that, in fact, there is not one half the possession of which is held under Hoy, and which now can be the subject of controversy. This defendant does not admit true, that the complainant never stripped himself of his title, but, at the time stated in the bill, he did sell it to Hezekiah Boone, and gave the instrument of writing to that effect,

which is herewith filed, and referred to as part of this answer; and it is not true, as this defendant believes, that the complainant did receive nothing, as will hereafter be shown. This defendant denies any combination with his co-defendants, Nicholas Smith, Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Commins, or either of them, in his purchase; nor had any of them any thing to do with his purchase till after it was made. For this defendant, on the 30th day of October, 1817, purchased of said Hezekiah Boone, as witnessed by their written contract, as part of this answer. This defendant fully admits, that he and the Boone's (to wit) Thomas Boone, the non-complainant, George Boone, and Hezekiah Boone, did bring their suit in chancery, in the Bourbon circuit court, against Hoy's heirs, setting forth the equity derived from Hoy, and did obtain a decree for the title to be made to this defendant, which title is accordingly; and this defendant refers to said record and conveyance as part of his answer, and avers that the Bourbon circuit court had proper and complete jurisdiction of the case, and he pleads and relies on the record as a complete bar to all claim set up by the complainant for the land, whatever his claim may be, to any part of the purchase money. This defendant admits full knowledge of the complainants' former interest, coupled with a knowledge of *of* his having parted with it; for, through him this defendant derives title, and the sale to this defendant was ratified by the complainants' agent for the purpose of giving his assent thereto, as will be seen by a copy of the letter of attorney, filed by the complainant himself, and the signature of his agent to the contract, to all which reference is made as part of this answer. But this defendant denies, that he then knew, or knows yet, that the terms of the complainants' sale to Hezekiah Boone has never been complied with, and insists that the complainant has no right to the land, if they never have. This defendant, in reply to the charge, that the suit aforesaid was fraudulently instituted, denies it, and in answer to its being done without the complainants' knowledge and approbation, and lack of his assent to the decree, and to the want of authority from him, *replies his letter of attorney, his contract in writing with H. Boone, the contract between said Hezekiah, &c.* with this defendant, and also the record, which he pleads as an estoppel to the complainant, and a bar to all such assertions, which assertions he denies. This defendant admits that he has made a contract with Nicholas Smith, Peter Smith, and Jacob Smeltzer, in which he understands John Smeltzer had an interest for part of the land, and this defendant avers, that they and others have long since lived upon the land, long before and since the purchase of the defendant, having originally claimed it under a purchase from a certain John South, who pretended to sell Hoy's title, but had no right thereto. This defendant further states, that he has purchased out, and holds, the interest of Hoy's heirs, as he can show by title and contracts regularly made; and if the complainant should per possibility, be entitled to any land, (which is denied) it cannot be to more than a moiety of what is saved, as the is held under other claims, and settled upon long before his purchase, as this defendant will show and prove. But, as this defendant is

advised, the complainant can have no right to any land, as by length of time and total dirrelection of his claim, for so many years he has laid by, until this defendant was likely to realize something by investigation, and then attempts to set up a stale demand.

This defendant further avers, that Hezekiah Boone is the uncle of the complainant, and that the complainant has never made any demand of him for payment for about or near twenty years, notwithstanding his usual intercourse with him, and this defendant relies on this as a presumption of payment and full discharge. He further states, as he is informed and believes, that the father of the complainant (William Boone,) was executor or administrator of Hezekiah Boone's father, and that on the death of the father of the complainant, the complainant became his executor, and that neither the father of the complainant, or complainant himself, ever distributed or paid to Hezekiah Boone any part of his father's estate, although he was entitled to a considerable sum, equal, perhaps, to the purchase money for the land, which was understood to go in payment; and that the lands belonging to Hezekiah Boone was sold by said Thomas Boone, the complainant, or the payment thereof was to come, and did come, to his hands, and this was a payment for the contract, which this defendant avers the said Hezekiah never did abandon. But if it should turn out that there is any balance due the complainant, and it should be decided that he is entitled thereto, on a settlement of accounts between him and the defendant, Hezekiah Boone, this defendant, as he owes money to said Hezekiah for the same land, is willing it should be decreed to the complainant, or so much thereof as will be sufficient to discharge such balance, but insists firmly that the complainant has no good claim to the land itself, the legal title to which is held by this defendant, and which, he insists, he has a right to retain, on doing equity to the complainant, if it should be found not to have been done already.

This defendant having fully (as he conceives,) answered the complainant's bill, he prays that the same may be dismissed with costs. WM. CHILES.

Franklin county, sct.

William Chiles personally appeared before the subscriber, a justice of the peace for said county, and made oath that the statements in the foregoing answer are true to the best of his knowledge and belief.

Oct. 8th, 1823. J. SWIGERT, J. P.

[*Reply to answer.*]

And afterwards, to wit, at rules held as aforesaid in the month and year aforesaid, to wit, (November, 1823,) came the complainant, and for replication to the answer of defendant Chiles, so far as it contradicts the allegations in his said bill are untrue, and the allegations in his said bill are true.

[*Order abating as to Commins, and leave to file bill revivor.*]

And afterwards, to wit, at the November term of the court

aforesaid, in the year aforesaid, to wit, (November, 1823,) came the complainant aforesaid, by his attorney, and on his motion, it is ordered, that this cause abate as to the defendant, Joseph Commins, by reason of his death, and, on the further motion of the complainant, by his attorney, leave is given him to file a bill of revivor, reviving this cause in the names of America Commins, and infant child Caroline Commins, his heirs and legal representatives; and it is ordered, that George W. Baylor be appointed guardian ad litem for the said infant heirs Caroline Commins: and the said bill of revivor is filed accordingly, which is as follows, to wit:

[*Bill revivor.*]

To the honorable the circuit court of the United States for the district of Kentucky: Thomas Boone, a citizen and resident of the State of Pennsylvania, complaining, showeth: That on the 25th day of January, 1823, your orator filed his bill in chancery in your honorable court against William Chiles and Joseph Commins, and others, setting forth the title of your in equity to two tracts of land in the county of Bourbon, patented in the name of William Hoy, to wit, a settlement of 400 acres, and a pre-emption of 1000, praying that the said Chiles and Commins, and others, holding the legal title, should be compelled to pay to convey to your orator, &c. all of which will more fully appear by reference to the said bill. Your orator would further state, that the process was duly served on the said Commins, and others, defendants, and several amended bills were subsequently, but the defendant, Commins, having entirely failed to make answer to any of the bills of your orator, departed this life on the day of last, leaving America Commins, and an infant child, Caroline Commins, his heirs and legal representatives, upon whom the right and interest of the said Joseph descended. Your orator, therefore, prays, that his said suit be revived against the said America and Caroline, and that he may re-serve against them such decree as may be right and equitable, &c. CRITTENDEN & HAGGIN.

Upon which bill of revivor issued the following subpœna, to wit:

[L. s.] The United States of America to the marshal of the Kentucky district, greeting: You are hereby commanded to summon America Commins and Caroline Commins, heirs and legal representatatives of Joseph Commins, deceased, and citizens and residents of Kentucky, to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in May next, to answer a bill in chancery exhibited against them, &c. by Thomas Boone, a citizen of the State of Pennsylvania, and this they shall in no wise omit under the penalty of four hundred dollars each, and have then there this writ.

In testimony whereof, John Marshall, esq. chief justice of the Supreme Court of the United States, hath caused the seal of our

said court to be hereunto affixed, this 31st day of January, 1824, and of our independence the 48th.

JOHN H. HANNA, C. C. C. K. D.

Marshal's return. Executed 10th March, 1824.

JAMES COLEMAN, Jr., D.
for Chapman Coleman, M. K. D.

[*Rule for answer.*]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of December, and year 1823, (until which time this cause was continued) came the complainant by his counsel, and gave the defendants, Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Commins, a rule to file their answers herein.

[*Leave to file bill.*]

And afterwards, to wit, at the November term of the court aforesaid, in the year 1823, until which time this cause was continued, on motion of the heirs of complainant, leave is given them to file a bill of revivor, which is done accordingly; which bill of revivor is as follows, to wit:

[*Revivor bill.*]

To the honorable the circuit court of the United States for the district of Kentucky, in chancery sitting: Sarah Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, Lincoln Boone, Richard Boone, Rebecca Boone, William Boone, and Thomas Boone, citizens of Pennsylvania, complaining, shew, that on the 25th day of January, 1823, a certain Thomas Boone, who was the father of your complainants, commenced a suit in your honorable court against a certain William Chiles, &c., citizens of Kentucky, alleging and setting forth the title in equity of the said Thomas to two tracts of land, being a settlement of 400 acres, and a pre-emption of 1000 acres, granted by the commonwealth of Virginia to William, as assignee of Reuben *of* Searcy; and praying that the defendants, or such of them as might be found to hold the legal title, should convey to the said Boone. Your complainants would further state that process was duly served on the defts.; and several amended bills and answers being filed, and depositions taken, and a bill of revivor being filed against the representatives of Commins, &c., and the suit being in full progress, the said Thomas Boone departed this life intestate, leaving your complainants his children and heirs at law. Your complainants pray that the suit aforesaid be revived in their name and for their benefit, against the defendants to the said suit. Your complainants pray, as in their original bill, &c.

CRITTENDEN & HAGGIN.

[*Bill taken for confessed, and set for trial.*]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of April, and year 1824, (until which time this cause was continued,) came the complainants by

their counsel, and the defendants, Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Commins, still failing to answer the complainants' bill, although ruled so to do. It is, on motion of the said complainants, by their counsel, ruled that the said bill be taken for confessed against the said defendants, Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smeltzer, George W. Baylor, Jacob Smith, John Evalt, and Joseph Commins; and at the same time, the said complainants *complainants* by their counsel, set this cause for hearing as to the defendants, Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smeltzer, George W. Baylor, Jacob Smith, and John Evalt, and continued on the rules as to the balance of the defendants.

[*Office judgment confirmed.*]

And afterwards, to wit, at the May term of the court aforesaid, in the year 1824, the defendants still failing to appear and answer the complainants' bill, it is now ordered that the decree, taking the bill pro confesso, be, and the same is hereby confirmed.

And it is decreed and ordered, that the said defendants severally do, on or before the first day of June next, convey to the complainants their right and interest in the land, in the bill mentioned, with warranty against them and their heirs and assigns only, and that they pay to the complainants the costs by them in the prosecution of this suit, as relates to the said defendants, expended; and it is ordered that the complainants have their writ of possession, &c.

[*Decree set aside, and leave to file bill revivor.*]

And afterwards, to wit, at a subsequent day of the term, and year aforesaid, came Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smeltzer, George W. Baylor, Jacob Smith, and John Evalt, by counsel; and, on motion, it is ordered, that the decree entered up against them at the present term, be set aside, and the cause remanded to the rules; and, on motion of the complainants, leave is given them to file a bill of revivor against the heirs of Hezekiah Boone; and it is further ordered, that, unless the defendants, against whom the bill was taken for confessed at the present term, put in their answers on or before the September rules, the complainants' bill may then be taken for confessed against them; and William T. Barry is appointed guardian, ad litem, to the infant heirs, &c.: which bill of revivor, so filed is as follows, to wit:

[*Bill of revivor.*]

To the honorable the judge of the circuit court of the United States, for the district of Kentucky, in chancery sitting:

Sarah Boone and others, heirs at law to Thomas Boone, D. complaining, shew, that their father, Thomas Boone, on the 25th day of January, 1825, a citizen of the State of Pennsylvania, commenced his suit in chancery in your honorable court, against a certain Hezekiah Boone and others, praying that the defendants,

or such of them as held the legal title, should convey to him two tracts of land, as more particularly described in the said bill; that the said Hezekiah in due form filed his answer to the said bill; that their said ancestor, Thomas, departed this life, and your complainants upon the bill filed, revived the said suit; and the same being in progress, the said Hezekiah also departed this life, leaving Solomon Boone, Hiram Boone, Mordecai Boone, Isaiah Boone, Hezekiah Boone, Abigail Smith, the wife of Humphrey Smith, Sally McIlyea, the wife of John McIlyea, Elizabeth Harris, the wife of Richard Harris, Deborah Cunningham, the wife of William Cunningham, his children and heirs at law: wherefore, your complainants pray that the said children of the said Hezekiah, and the husbands of the said feme coverts, be made defendants, and their said suit be revived against them; and that your honors grant to them such relief as previously prayed, &c., &c.

CRITTENDEN, &c., *for complainants.*

[*Rule for answers.*]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, and month of June, and year 1824, (until which time this cause was continued,) came the complainants by their counsel, and gave the defendants, America and Caroline Commins, heirs, &c., of Jos. Commins, a rule to file their answers herein.

[*Bill taken for confessed.*]

And afterwards, to wit, at rules held in the clerk's office as aforesaid, in month of July, and year 1824, (until which time this cause was continued) came the complainants aforesaid, their counsel and the said heirs of Commins having failed to answer the complainants' bill herein, although ruled so to do: it is, on motion of the said complainants, ruled that the said bill be taken for confessed against the said America and Caroline, heirs as aforesaid.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of September, and year 1824, (until which time this case was continued) came the defendants, Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smith, and George W. Baylor, and filed their joint and separate answer to the bill filed herein; which is as follows, to wit:

[*Answer of Smith and others.*]

The joint and separate answer of Nicholas Smith, sen., Nicholas Smith, jun., Jacob Smith, and George W. Baylor, to a bill in chancery, exhibited against them and others in the honorable the circuit court of the United States for the district of Kentucky, *buy* Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, William Boone, and Thomas Boone. These defendants saving and reserving to themselves the benefit of all just exception to the many *errours* and untruths contained in the complainants' bill, for answer to so much thereof as they are advised is material for them to answer unto, saith: that as to the pendency and

determination of the suit in chancery in the Bourbon circuit court, wherein *there* co-defendant, William Chiles, &c., *ware* complainants, and William Hoy's heirs, &c., are defendants, that they were not parties to that suit, and do not conceive themselves bound by the decree of that court; and require the complainants to make full proof of *there* case in as ample and complete *maner* as if said suit had never been commenced. They charge that said suit is now depending and undetermined, in the appellate court of Kentucky, by writ of errour taken by Hoy's heirs, in which the validity of Chiles' claim is contested; which proceedings, in the appellate court aforesaid, they pray may be made a part of this answer, if denied, so that there is no final decision in Chiles' favor; nor do they believe that he will ever recover. Your respondents admit that Reuben Searcy claimed a settlement and pre-emption of 1400 acres of land, that it was located by John Martin, and patented in the name of William Hoy. They charge, that since the location has been made, the land surveyed and patented, it has been discovered that there is a large surplus contained in said tract, of five or six hundred acres, making in all near two thousand acres of land; that if complainant ever had claim to 700 acres, part thereof, it might in equity be satisfied in a different part of the tract, without disturbing your respondents; which, if they should be entitled to recover, they pray may be done. Your respondents state, that from the great length of time from the date of the execution of Searcy's bond to Hoy, alleged to be the 4th of September, 1781, up *up* to the late commencement of the complainants' suit, being years, it cannot now be reasonably expected that your respondents should be able to give an accurate account of all the necessary facts in setting forth *there* title in equity to the land in controversy. The lapse of time, and staleness of the complainants' demand, they plead and rely upon in *bar* to their pretended right to recover. Your respondents, as far as they know or are informed, deny that the complainants are entitled to recover the land in the bill mentioned; nor do they believe that the said Thomas considered himself for many years as holding any equity or being entitled to the land; nor did he pretend title thereto until of late; which they believe he would not have done but for the reasons hereinafter mentioned. Your respondents charge that they are informed that William Hoy assigned the said Reuben Searcy's bond to George Boone; but they do not know that George Boone ever did assign said bond to Thomas Boone, nor can they admit it; and therefore call for full proof as to said assignment, alleged to be made by the said George Boone to the said Thomas Boone. Your respondents charge that, if said bond ever was assigned to said Thomas Boone, that it has long since been cancelled between the said George and Thomas; that the said George Boone assigned said bond to a certain John South, investing him with all the title to said land which the said George derived from the said William Hoy. Your respondents further state that, if said Searcy's bond was ever assigned by the said George to the said Thomas, that the said Thomas Boone did, by his agency and consent, authorize the assignment made by the said George Boone to the said John South, and that the

said George and Thomas entered into other arrangements, by which the said assignment from the said George to the said Thomas became cancelled, and the right to said bond of Searcy to Hoy vested in the said John South. They charge that the said John South, by virtue of said assignment, held said bond in his possession until his death; that his executor also held it until of late, when it was fraudulently and improperly obtained from him by there co-defendant, William Chiles, as they will hereafter state.

Your respondents charge that they are entitled to the following parcels of said land in contents by virtue of a purchase made for a valuable consideration from the said John South; that said South sold four hundred acres to a certain Peter Smeltzer, and executed his bond for a title thereto; that some years afterwards, the said Smeltzer and South entered into another arrangement, and the said South then gave another bond with Walter Carr and John Glover, her securities, which last bond *bond* was afterwards recorded in the Bourbon circuit court office, a copy of which is here made a part of this answer, exhibit A; that said Peter Smeltzer departed this life, having first made his last will and testament, in which, amongst other things, he devised the aforesaid land to his three children, John Smelser, Jacob Smelser, and Anna Mariah Smelser, with a life estate to his widow, Barbara Smelser; that she is still living, and has let the said Jacob have her interest; that said Anna Mariah has intermarried with a John Smelser, snr.; that said tract of land has been regularly divided between the said John, Jacob, and Anna Mariah; that your respondent, George W. Baylor, claims the lots of John Smelser, and of John Smelser, sr. and Anna Mariah part of the four hundred acres sold by the said John South to the said Peter Smeltzer; that your respondent purchased, for a valuable consideration, the aforesaid two lots from the said John, Jacob, and John, and Anna Maria Smelsers; that he has obtained a deed from the said John and Anna Mariah Smelsers, which he here annexes as a part of this answer, *exhibit* H; that he holds the bonds of John and Jacob, which he also makes part of this answer. Your respondent, George W. Baylor, charges that the said Peter Smelser, in his lifetime, directly after he made the purchase from said South, settled upon the land and improved it; that he resided upon the land until his death; that his widow and children have continued to reside upon it until the purchase of your respondent, who now resides upon it; that they have made large, lasting, and valuable improvements upon said land. Your respondent, Nicholas Smith, states, that he holds two hundred acres of said land, by virtue of a purchase from Jacob Swope, who is entitled to it by virtue of a purchase made from George Pope, who *who* purchased from the aforesaid John South; that he also holds fifty acres by purchase from a certain John Jones, and has obtained his deed therefor, which he prays may be made a part of this answer, *exhibit* D; that said fifty acres of land is a part of a tract of 492 acres, entered, surveyed, and patented in the name of William Flournoy; that said Jones is entitled, by virtue of his purchase to Flournoy's title, to the aforesaid fifty acres of land, which your respondent holds adverse to the claim of the said Reuben Searcy; he charges

that Flournoy's entry is of elder date than that of the said Searcy's; that it was made upon 11th of May, 1780, and is in the words and figures following, (here insert it); that said entry, he is informed, is precise and special, the objects notorious, called for and made according to the provisions of the land law, and has been regularly carried into grant upon the 29th of June, 1787, authenticated copies of which are prayed to be made part of this answer; that said William Hoy, by fraud, caused the entry of the said Reuben Searcy to be surveyed and patented, so as to interfere with the said Flournoy's entry, and obtained a grant of an elder date than that of the said Flournoy's: he charges that said Searcy's entry is not made special and precise, according to law, but that it is vague, uncertain, and void, and ought not to be permitted to interfere with the better title of said Flournoy, so as to take from your respondent the aforesaid fifty acres of land; that thus the land has been held settled and improved for many years; that he has made large, lasting, and valuable improvements upon said land; that he still continues to reside upon it, as of right he is entitled to do; that the defendants, Jacob and Nicholas, are his children, and he has settled them upon the land. The defendants, Jacob, Nicholas, state that they hold under their father, as above stated, and claim to be protected under him: the defendant, Jacob Smith, states that he has also made valuable and lasting improvements upon said land, separate and distinct from the improvements made by his father. Your respondents having set forth the manner which they derive title to the land, charge, that during the long residence upon the land, the said Thomas Boone, in the years of 1802 and 1810, or 1811 or 1812, and in 1819, and perhaps oftener, as they are informed, was in the State of Kentucky and at the house of the said George Boone, well knowing that the said George Boone had sold the land to said John Evalt; that the land had been *had been* sold by South, then occupied, improved and held by those to whom said South had sold; and the said Thomas Boone, passing through the county of Bourbon, in which the land is situated, stopped for some time in the country within five or six miles of the land, but he, the said Thomas Boone, made no claim whatever to the land, nor did he give to the persons then resident upon the land the least notice that he ever would set up any claim to the land; but on the contrary, your respondents state that they have been informed since the pendency of this suit, that said Thomas Boone, when in the county, was *herd* to disclaim the right to the land, in speaking of the transaction between himself and the said George Boone. Your respondents will now state the manner by which *there* co-defendant, William Chiles, obtained the bond executed by Reuben Searcy to William Hoy. They charge, that the said Chiles came to the house of Nicholas Smith, sen.; that Jacob Smelser and Peter Smith (both then having an interest in the land) were present; that said Chiles then informed the said Smiths and Smelser that he had said Hoy's legal title to the land; that the bonds executed by the said John South and held by them, were not worth any thing; they would not even be entitled to compensation for their lasting and valuable improvements made upon said tract of land; they not being acquainted with *there* rights and the true

situation of ther title to said land, became alarmed about losing it. The said Chiles then proposed to comprosed to compromise, and told them that if they would pay them ten dollars per acre, and in addition give him the bond executed by the said South, Carr, and Glover, to Peter, also the bond executed by said Souths which the said Nicholas Smith held, that he, the said Chiles, would make them Hoy's legal title to the land, which they, being ignorant of the facts of the case, assented to, the terms of payment being fixed at three annual instalments, the quantity of land estimated at 600 acres, and each to pay only his own part: the said Chiles then drew an article of agreement between them, leaving a blank for the name John Smelser, so as to include him for the lot of the said John and Anna Mariah, the said John not then being present.

The said Chiles having finished the argument, again assured them that he would make them Hoy's title, stating that he could make it in a few days, or as soon as he could ride home to Mount Sterling, being a distance of about thirty miles. Under this assurance, the said Nicholas Smith, Jacob Smelser, and Peter Smith, signed the agreement, and did not, at that time, read it; the said John Smelser, having thereafter to sign it: that at this time the said Smiths and Smelser gave up to Chiles the aforesaid bonds of John South: they charge that said Chiles did not draw the contract as then made; that he fraudulently made the argument bind them jointly for the sum of $6,000; made the money payable in presenti, instead of by instalments: also made them responsible for the lot of John and Anna Mariah Smelser, which the said John was, by the agreement, to pay for himself. They state, that said John Smelser afterwards refused to sign said agreement, or become a party to it; thus having, by the contract as drawn, the said Nicholas, Peter, and Jacob to pay for the lot of John and Anna Mariah, which is included in the contract contrary to their agreement; that thus in the making and drafting said contract, they are now informed, and believe, that the said Nicholas, Peter, and Jacob, were overreached, *grosely* deceived and defrauded in the making said agreement; that much to *there* astonishment and surprise they have discovered that the whole of said Chiles' representations and statements, made as above-stated, as inducement to the making of the contract, was a false fabrication of his own; that he being well acquainted with the true situation of the title to said land, concealed it from them. They now charge, that said Chiles, at the time of making of said contract, had not Hoy's legal title to the said land, nor had he even an equity which would enable him to procure it, but on the contrary, no sooner had he obtained said South's bonds from the said Nicholas, Peter, and Jacob, than he went to the executor of the said South, a certain Benjamin South, the said John having departed this life, gave up to said executor the bonds of the said John South, and obtained from him the bond executed by Searcy to Hoy, for the land in contest, which bond was assigned as before stated, to the said John South; and at that time the assignment to said South was by the said Chiles, or Benjamin South, stricken out; an act wholly unauthorized, and, they believe, done to cover the fraud practised by the said Chiles upon the

said Nicholas Smith, Peter Smith, and Jacob Smelser, in obtaining the said John South's bonds. Thus the said Chiles, not having paid any consideration, known to your respondents, for said land, did, upon his having obtained said Searcy's bond, commence the suit in chancery, in the Bourbon circuit court, against Hoy's heirs, &c. and sometime thereafter obtained the decree, in the complainants' bill mentioned, for the legal title to said land, and obtained a deed for the land. The correctness of which decree is still questioned in the appellate court of Kentucky, as before stated, the whole of which actings and doings on the part of the said Chiles, to the great injury and oppression of your respondents, they pray to be relieved from, in such manner as this honorable court may think proper, and for that purpose, and to enable the court to render a decree in favor of your respondents, they pray that this answer may be take as a cross bill against said Chiles, that he may answer all; that he be compelled to restore the aforesaid bonds of said South, or such other decree had against him for the legal title to said land, as their case may require, and to equity may belong, that the contract made with said Chiles, Nicholas Smith, Peter Smith, and Jacob Smelser, be rescinded, cancelled, set aside, and held for nought.

Your respondents know nothing of the pretended claim of Hezekiah Boone, and cannot admit it, and call for proof. Your respondents would show, that the said Chiles, in consequence of his fraudulent conduct in relation to said land, there has been, and now is, depending in the Bourbon circuit court, the following suits at law, and in equity an ejectment, brought by the said Chiles, in the name of Hoy's heirs, against the said Nicholas, &c. then in possession of the land. That said Chiles, also, commenced his suit against the said Nicholas Smith, &c. upon the contract to make Hoy's title, that he has recovered judgment at law thereon for the sum of $ A bill in chancery exhibited by the said Nicholas Smith, &c. against the said Chiles, &c. to be relieved from said judgment. That in this suit the said Thomas Boone, is made defendant. A bill in chancery exibited by John and Anna Mariah Smelsers, against the said Chiles, &c. in this suit. The said Thomas Boone is also made defendant, and has answered a bill exibited by the said Reuben Searcy, against Hoy's heirs, &c. the whole proceedings in said suits, if necessary or denied, they will, in due time, make part of this answer, subject matter now properly depending in the aforesaid Bourbon circuit court, and for this cause they object to the jurisdiction of this honorable court. They also object to the jurisdiction of this honorable court, because the complainants have not brought the proper parties before the court.

Your respondents deny that complainants are entitled to rents in case of recovery; but should under all the circumstances of there case, it be there misfortune to loose the land, they claim a just compensation for there lasting and valuable improvements, under such rules and regulations, according to law and equity, as there case may require and justice demand.

Your respondents charge, that the complainants are not entitled to recover in case of success, but the one moiety of said

land, nor do they believe, that the said Thomas Boone ever would have set up claim to any part of it, but for the following reasons: That just before the commencement of this suit, a certain Boone Ingles, a citizen of Kentucky, resident in the town of Paris, being stimulated with the love of land speculation, and having some knowledge of the situation of the title to said land, went to the house of the said Thomas Boone, in the State of Pennsylvania; that there the said Ingles, with the knowledge of the just right of your respondents to said land, induced the said Thomas Boone to make a contract with him, by which contract the said Boone Ingles is at his own proper cost and charges to prosecute this suit in the name of the said Thomas Boone, in this honorable court; that said Ingles was, in case of success, to have one half of the land, and the said Thomas Boone to be at no trouble or cost whatever. This contract was made before the commencement of this suit; said Ingles paid nothing for it, as they are informed and believe, nor is he to pay the said Boone any thing for said land, other than the prosecution of this suit most unjustly brought against your respondents; they charge, as before stated, that said Ingles was, at the time of making the said contract, and at the time of the commencement of this suit, a citizen of Kentucky, and that he still resides in Kentucky. For this, as well as other causes, these respondents deny that this honorable court has jurisdiction of the case, and object to the further proceedings of the case.

These respondents further plead, and rely upon the common law, the rules and principles of equity, and the statute of champarty and maintainance as a bar to the complainants' recovery; they also plead and rely upon the statute of limitations, both as to the complainants' demand for the land, and the rents, and the profits thereof.

These respondents having answered all the material allegations of the complainants' bill, reserving to themselves the right of denying what is not herein expressly admitted, pray to be hence dismissed with their proper cost, in this behalf most unjustly expended.

W. T. BARRY. for defendants.

State of Kentucky, Bourbon county, sct.

This day, personally came before me, William Hutchison, jr., one of the justices of the peace, for the county aforesaid; the within Nicholas Smith, Jacob Smith, and George W. Baylor, and made oath, that the facts as stated from there own knowledge, contained in the within answer are true, so far as they are stated from information they believe to be true. Given under my hand and seal, this 1st day of September, 1824.

WILLIAM HUTCHISON, Jr. [L. S.]

And afterwards, to wit, at rules held in the clerk's office, of the court aforesaid, in the month of December, and year 1824, (until which time this cause was continued on the rules,) came the complainants and filed the following replication to the foregoing answer, which replication is as follows, to wit:

[*Reply to Answers.*]

The following is the replication of Thomas Boone's heirs to the answers of such of the foregoing defendants as have answered in a suit in chancery, now depending in the circuit court of the United States, for the district of Kentucky. These repliants saving and reserving to themselves all manner of advantage of exception to the manifold insufficiencies of the said answers for replication thereto say, that they will aver and prove the allegations of their bill to be true, certain, and sufficient in the law, to be answered unto, and that the said answers of said defendants, Charles H. Boone, Nicholas Smith, sen., Nicholas Smith, jr., Jacob Smith, and George W. Baylor, are uncertain, untrue, and insufficient to be replied to by these repliants without that *that* any thing or matter whatsoever in said answers contained, material or effectual in the law to be replied to, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver and prove as this court shall direct. These repliants pray, as in their original bill is already prayed, and a commission is awarded either party to take depositions.

[*Rule vs. Evalt, &c.*]

And afterwards, to wit, at the May term, of the court aforesaid, in the year 1825, (until which time this cause was continued,) on motion of the complainants, by their counsel, a summons is awarded them against Jacob Smith and John Evalt, to show cause why an attachment should not issue against them, for a contempt by them offered to the court, in continuing to commit waste on the land in controversy, returnable to the 30th day of this term.

[*Rule vs. Evalt, &c. renewed.*]

And afterwards at a subsequent day of the term, and year aforesaid, on motion of the complainants, by their counsel, a summon is awarded them against Jacob Smith and John Evalt, to show cause why an attachment should not issue against them, for a contempt by them offered to the court, in continuing to commit waste on the land in controversy. Returnable to the sixth day of the next term of this court.

And afterwards, at a subsequent day of the term and year aforesaid, on motion of Commins's heirs, by their attorney, it is ordered that Thomas A. Grimes be appointed guardian, adlitem, to the infant heir, Caroline Commins, in the room of the former guardian.

And afterwards, to wit, at rules held in the clerk's office, of the court aforesaid, in the of July, and year 1825, (until which time this cause was continued) came the defendants, Caroline and America Commins, and filed their answers herein to the complainants' bill.

[*Reply to answer.*]

And the complainants, by their counsel, for replication to said answers say, that so far as the statements, in said answers, contradict the allegations of their said bill, are untrue, and that the allegations of their said bill are true, and a commission is awarded either party to take depositions.

[*Commins's answers.*]

Which said answers are as follows, to wit: the answer of Caroline Commins, the legal heir and representative of Joseph Commins, deceased, by T. A. Grimes, her guardian, *adlitem*, to a bill in chancery, exhibited against her and others, in the seventh circuit court of the U. States, held in and for the Kentucky district, by Sarah Boone, Lincoln Boone, Richd. Boone, Rebecca Boone, Jeremiah Boone, Dan. Boone, Morgan Boone, Wm. Boone, and Thos. Boone, heirs and representatives of Thomas Boone, deceased. This defendant saving to herself the benefit of exceptions to the errors and irregularities of said bill, for answer to so much as she is advised is material to answer, says it may be true that Reuben Searcy was entitled to 400 acres of land on Stoner, and a pre-emption of 1,000 adjoining, as stated in said complainants' bill; and John Martin located the same upon the halves, and said Searcy sold 700 acres of said land to William Hoy, and he obtained a grant to said land, as stated in said bill, the alleged assignment from said Hoy to George Boone, and from him to Thomas Boone as stated in said bill, this defendant requires proof, the further allegation on said bill, that said J. Martin has long enjoyed one equal half of said 1,400 acres of land, in severalty this defendant requires proof; the further allegation of said bill charging. William Chiles obtained a decree in the Bourbon circuit court for two parcels of the certificate and pre-emption, this defendant cannot gainsay, but as to the justice of said decree, this defendant is unadvised; the charge in said bill that they, said complainants, never gave their consent to William Chiles, nor their ancestor, to bring the aforesaid suit in the name of said decedent, this defendant is unadvised; this defendant further answers and says, she claims title to 267½ acres of the aforesaid land, by a contract made between her farther, in his life time, with a certain Jacob Smelser, and if denied, she refers to an attested copy as a part of this answer, or the original, and the said Smelser claims, by virtue of a contract made with Wm. Chiles, together *a* devise of his farther, which this defendant will refer to if necessary, or an attested copy; this defendant further answers and sayeth, the contract aforesaid, between her deceased ancestor and said Jacob Smelser is not binding upon her, as she is advised and believes it to be true, the said Smelser committed a *moste groce* fraud upon her ancestor in the sale of the aforesaid land; but should the said contract be declared valid, this defendant has had abut 30 years' possession of a part of the premises, before suit was brought by said complainants, which more fully, and be explained if necessary, this defendant as aforesaid, having answered so much of said complainants' bill as is material for her to answer, requires proof of all the allegations not answered by her as aforesaid; and, hence, to be dismissed with her costs, &c., and such other orders as the court shall deem necessary to the equity of her cause.

T. A. GRIMES,
Guardian, adlitem, for Caroline Commins.

[*Answer of America Commins.*]

The answer of America Commins, widow and administratrix of

Joseph Commins, deceased, to a bill in chancery, exhibited against her and others, in the seventh circuit court of the United States, in the Kentucky district, by the heirs of Thomas Boone, deceased, to wit: Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, William Boone, and Thomas Boone. This defendant saving and reserving now, and at times, the exceptions to the many errors of said bill, for answer to much of said bill as she is advised is material for her to answer, sayeth, that she believes it to be true, that Reuben Searcy was entitled to 400 acres of land on Stoner, and a pre-emption of a 1,000 acres adjoining, as stated in their bill, and John Martin located the same on the halves, as stated in the complainants' bill, and said Searcy sold 700 acres of said land to William Hoy, as stated in their bill, and the said Hoy obtained a grant to said land as stated in the bill, but the assignment of said Hoy to George Boone, and the assignment of said George Boone to Thomas Boone, this defendant, unadvised of the truth of the said assignments, and requires proof as to the further charge in said complainants' bill, that the said Martin has long enjoyed one half of said land in severalty; this defendant knows of no partition between said Martin and Searcy, and Hoy, and requires proof. The allegation as to the allegation in said complainants' bill, charging that their deceased ancestor, by contract, conveyed his interest to said land to Hezekiah Boone, and Hezekiah to said Chiles, this defendant is unadvised the further allegations of said complainants' bill, charging the said Chiles, commenced a suit, and obtained a decree for two parcels of the certificate and pre-emption; this defendant cannot gainsay as to the further charge in said complainants' bill, charging the decree aforesaid obtained by Chiles was unauthorized; and they, said complainants, never divested themselves of their interest to said land, this defendant is unadvised. This defendant answers and says, she derives title to the premises in controversy from a certain Jacob Smelser, for 267½ acres, by contract made between said Smelser and Joseph Commins, in his life time; for greater certainty she refers to as a part of this answer, or an attested copy, and the said Jacob having derived title from his farther, by devise, toge*a*ther with a contract with William Chiles, for greater certainty she refers, or an attested copy, as a part of this answer; and the said Chiles claims by contract with Hezekiah Boone, who claims by contract with Thomas Boone, deceased, the ancestor of the present complainants, and for greater certainty she refers to, *or and* attested copy*s*, as a part of this answer. This defendant having answered so much of the complainants' bill as she deems material to answer, requires proof the allegations of said complainants' bill which is not answered by her, and prays, hence, to be dismissed with her costs, &c.

Bourbon county, sct.

This day personally appeared before me, one of the commonwealth justices of the peace, in and for Bourbon county, America Commins, and made oath that the matter contained in this, stated on her own knowledge, is true; and so far as stated upon the information of others she believes to be true. Given from under my hand, as a justice of the peace, this eighth day of June, 1825.

JAMES ROBISON. [SEAL.]

[*Rule for hearing.*]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the year 1825, (until which time this cause was continued,) came the complainants by their counsel, and gave the defendants a rule for hearing herein.

[*Set for hearing.*]

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid in the year 1825, (until which time this cause was continued) came again the said complainants by their counsel, and set this cause down for hearing.

[*Motion to remand cause to rules.*]

And afterwards, to wit, at the November term of the court aforesaid in the year 1826, (until which time this cause was continued,) came the defendants by counsel, and moved the court to remand this cause to the rules; and afterwards, to wit, at subsequent day of the term and year aforesaid, (to wit, November term, 1826,)

[*Agreement that cause be tried.*]

came the defendants by their counsel, and waived all irregularity in setting this cause down for trial, and agree with the complainants that the cause shall stand for trial on the fourth day of the next term, and on motion of the defendants a commission is awarded either party to take depositions generally.

[*Leave to file answers; reply to answers.*]

And afterwards at a subsequent day of the term and year aforesaid, came the parties aforesaid by their attorneys, and on motion of the defendant, Jacob Smelser, leave is given him to file his answer herein, which is done accordingly; and the complainants for replication to said answer say, that the matters and things contained in their bill are true, and that the matters and things contained in said answer, so far as the same contradict the allegations of his said bill, are untrue. It is ordered by the court, that this cause stand on the issue docket.

[*Answer of Jacob Smelser.*]

The separate answer of Jacob Smeltser to a bill in chancery exhibited by Thomas Boone in his life time, and since revived in the name of what they are pleased to call the heirs of Thomas Boone, commenced and now depending in the honorable the federal court for the seventh district of Kentucky, against William Chiles, &c. This respondent, saving and reserving to himself the right to object to the many errors and untruths contained in the bills for answer, &c., says, that he has sold the land to George W. Baylor and to Joseph Commins, that he has now no claim or interest in the land, he prays that their interest may be protected, requires full proof of all the allegations of the original bill, and amended bills, and prays to be dismissed with his cost.

JACOB SMELTSER.

State of Kentucky, Bourbon county.

The within Jacob Smeltser, personally appeared before me, a justice of the peace, in and for the county aforesaid, and made oath that the facts stated in the within answer, are, to the best of

his knowledge, true. Given under my hand and seal, this day of November, 1826.

HENRY TIMBERLAKE.

[*Leave to file bill revivor.*]

And afterwards, to wit, at the November term of the court aforesaid, in the year 1827, (until which time this cause was continued) came the complainants, by their counsel, and suggested the death of George W. Baylor, one of the defendants in this cause, and thereupon, on his *his* motion, leave is given him to file a bill of revivor herein, to revive this suit against the heirs of said George W. Baylor, which is done accordingly, and on the further

[*Leave to file amended bill.*]

motion of the complainants, leave is given them to file an amended bill making other defendants, which is done accordingly, and this cause is remanded to the rules for further proceedings to be had therein. Which bill of revivor to revive in name of Baylor's heirs, and amended bill making other defendants, are as follows, to wit:

[*Bill of revivor.*]

To the honorable judges of the circuit court of the United States, 7th circuit, Kentucky district: Your orator, Thomas Boone, a citizen of the State of Pennsylvania, respectfully represents, that he has a suit depending in this honorable court against George Baylor and others; your orator would represent that, since the institution of said suit, George Baylor has departed this life, leaving Elizabeth Baylor, Mary Jane Baylor, Walker Baylor, Georgeanne Baylor, his heirs and representatives, whom your orator prays may be made defendants to the original bill, and answer the same; your orator prays the said suit may be revived against them as heirs at law of George Baylor, deceased, and all the matters and things in said original bill be decreed against them as heirs at law of said estate aforesaid.

HAGGIN & CRITTENDEN,
THOS. TRIPLETT, P. Q.

[*Amended bill.*]

To the honorable judges of the circuit court of the United States, seventh circuit, Kentucky district: Your orator, Thomas Boone, respectfully represents, that he has a suit now depending in your honorable court against William Chiles and others; your orator would further represent, that the heirs of John South, to wit, Adam Rogers, who intermarried Elizabeth South, who is now dead, leaving John Rogers, Elizabeth Parthenia Rogers, Samuel Rogers, Jane Rogers, her infant heirs, Moses, David, Davidson and Parthenia, his wife, late Parthenia South, James Eastin and Theodocia, his wife, late Theodocia South, David Hudson and Judeth, his wife, late Judeth South, Amos Baker and Sarah, his wife, late Sarah South, Elgiva South, Margaret South and John South, claim to be materially interested in the suit, setting up some pretended claim to the said land in the bill specified, and land therein described and claimed by your orator; your orator alleges the aforesaid heirs of John South are citizens and

residents in Kentucky; your orator prays that the aforesaid described heirs and representatives be made defendants to this and the original bill, and answer all their allegations as if repeated by interrogatories, and your honors on final hearing decree against said defendants as is prayed in the original, and grant such other and further relief as equity belongs, prays the United States' writ of subpœna, and he will pray, &c.

HAGGIN & CRITTENDEN,
THOS. TRIPLETT, P. Q.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid, in the month of December, and year 1827, (until which time this cause was continued) came the complainants by counsel, and filed the following bill of revivor herein, to wit:

[*Bill of revivor.*]

To the honorable judges of the circuit court of the United States: Your orator and oratrixes, Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone and Thomas Boone, heirs of Thomas Boone, deceased, citizens of the State of Pennsylvania, respectfully represents, that he has a suit depending in this honorable court against George Baylor and others; your orator would represent that since the institution of said suit, George Baylor has departed this life, leaving Elizabeth Baylor, Mary Jane Baylor, Walker Baylor, Georgeann Baylor, his heirs and representatives, whom your orator prays may be made defendants to the original bill, and answer the same; your orator prays the said suit may be revived against them as heirs at law of George Baylor, deceased, and all matters and things in said original be decreed against them as heirs at law of said estate aforesaid.

THOS. TRIPLETT, P. Q.

[*Chancery subpœna on amended bill.*]

Chancery subpœna on bill of revivor, to wit:

[L. S.] The United States of America, to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Elizabeth Baylor, Mary Jane Baylor, Walker Baylor and Georgeann Baylor, heirs and representatives of George Baylor, deceased, to appear before the judges of our seventh circuit court of the United States, in and for the Kentucky district, at the capitol, in Frankfort, on the first day of our May term next, to answer a bill in chancery exhibited against them, &c., by Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone and Thomas Boone, heirs of Thomas Boone, deceased, and this they shall in no wise omit, under the penalty of four hundred dollars, and have then there this writ. In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused aforesaid court to be hereunto affixed, this 3d day of December, 1827, and of our independence the 52d.

Attest:

JNO. H. HANNA, C. C. C. K. D.

January 7th, 1828, executed on Elizabeth Baylor, Mary Jane Baylor, Walker Baylor and Georgeann Baylor.

L. LOUGHERY, D. M. for
C. COLEMAN, M. D. K.

And afterwards, to wit, at rules held in the clerk's office of the court aforesaid in the month of December, and year 1827, came the complainants by their counsel, and filed the following bill of revivor herein, to wit:

[*Bill of revivor.*]

To the honorable judges of the circuit of the United States, 7th circuit, Kentucky district: Your oratrix, Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, William Boone and Thomas Boone, heirs of Thomas Boone, deceased, citizens of Pennsylvania, respectfully represents, that he has a suit now depending in your honorable court against William Chiles and others, originally instituted by Thomas Boone, deceased, your orators and oratrix would further represent that the heirs of John South, to wit, Adam Rogers, who intermarried with Elizabeth South, who is now dead, leaving John Rogers, Elizabeth Parthenia Rogers, Samuel Rogers, Jane Rogers, her infant heirs, and Moses Davidson, and Parthenia, his wife, late Parthenia South, Jane Eastin and Theodocia, his wife, late Thodocia, his wife, David Hudson, and Judeth, his wife, late Judeth South, Elgiva South, Margaret South and John South, claim to be materially interested in the suit, setting up some pretended claim to the said land in the bond in the bill specified, and the land therein described and claimed by your orator; your orator alleges the aforesaid heirs of John South are citizens of and residents in Kentucky; your orators prays that the aforesaid described heirs and representatives be made defendants to this bill and the original bill, and answer all their allegations, as if repeated by way *way* of interrogatories, and prays your honors on final hearing, decree against said defendants as is prayed in his original bill, and grant such other and further relief as equity requires, prays United States' writ subpoena, &c.

THOS. TRIPLETT, P. Q.

[*Cause set for hearing by complainants.*]

And afterwards, at rules held in the clerk's office of the court aforesaid, in the month of October and year 1828, (until which time this cause was continued) came the complainants by their counsel, and set this cause down for hearing; and afterwards to wit, at the November term of the court aforesaid, in the year 1828, came the parties aforesaid by their counsel, and the defendant, John Evalt, by his counsel moved the court for permission to file his answer herein, which is granted and the answer filed accordingly; and the complainants for replication to the said answer say, that the matters and things therein contained, so far

[*Reply to answers.*]

as the same contradict the allegations of their said bill are untrue, and that the allegations of their said bill are true. And by con-

sent, this cause to stand for trial, as to this defendant Evalt, also, on the 12th day of the present term of this court.

[*Dedimus awarded to either party.*]

And afterwards, to wit, at a subsequent day of the term and year last aforesaid, on motion of the complainants by their counsel, a dedimus is awarded either party to take depositions in this case.

The separate answer of John Evalt, to a bill in chancery exhibited against himself and others, in the circuit court of the United States for the district of Kentucky: Thomas Boone, this respondent, saving and reserving, &c. for answer to said bill, or so much thereof as he is advised it is material for him to answer, answereth and saith that it is not true, as alleged in the complainants' bill, that this respondent holds or claims title to the land demanded of your respondent by complainant in his bill, under the settlement and pre-emption of Reuben Searcy, or under the grant which issued to William Hoy, on the day of 1785, for said settlement and preemption; but your respondent avers that he holds and derives title to the said land, claimed and demanded of him in complainants' bill, under and by virtue of a grant from the commonwealth of Virginia to Wm. Flournoy, dated on the 29th day of June, seventeen hundred and eighty-seven; this respondent holding the legal title by a chain of deeds deduced to him from the said grantee. Your respondent would further show, that the grant under which he holds, is of a later date than that which issued on and for the settlement and pre-emption of Reuben Searcy, and would therefore urge, that whatever demands exist against him under that claim are of a character purely legal, and not the subjects of equitable jurisdiction for this court. Your respondent will, in due time, file a copy of the aforesaid grant to said Flournoy, together with copies of the deeds establishing a regular deduction of title from him to this respondent, all of which, when filed, he prays may be taken and considered as part of this answer.

Your respondents would further state, that he and those under whom he derives title, have been in the undisturbed possession and enjoyment of the land demanded of him in the complainants' bill, for and during the period and term of about thirty-six years; he relies upon lengths of possession to secure and protect him in his title.

Your respondent denies a.. fraud and combination, and having fully answered, prays to be hence dismissed with his costs.

JOHN EVALT.

Bourbon county, sct.

This day personally appeared before me, Henry Timberlake, a justice of the peace for said county, John Evalt, and made oath that the matters contained in the above answer in chancery, are true, as far as they depend upon his own knowledge, and as far as they are derived from the information of others, he believes them to be true.

Given under my hand and seal, this 4th day of November, 1828.

HENRY TIMBERLAKE.

[*Guardian appointed.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid. (to wit, November term, 1828,) came the parties aforesaid, by their counsel, and on motion of the complainants' counsel, it is ordered that William M. Baylor be appointed guardian *ad litem*, to defend this suit for the infant heirs of George W. Baylor, deceased; whereupon the said guardian produced the answers of the said infant heirs, and filed the same; and it is agreed as far as Evalt is concerned, that the land demanded by complainants by is included in the grants to Hoy and Flournoy, and it is admitted that Thomas Boone, the original complainant, was in the now State of Kentucky in the year 1819.

[*Answers of heirs.*]

Which answer is as follows, to wit: The answer of Walker R. Baylor, Mary Jane Baylor and Georgeanne Baylor, children, infants under 25 years of age, heirs and legal representatives of George W. Baylor deceased, by William M. Baylor their guardian, appointed by the honorable circuit court of the United States for the seventh circuit and district of Kentucky, in a suit in chancery depending therein, wherein Thomas Boone's heirs are complainants, and said George W. Baylor and others, and the said children and heirs of said George W. Baylor before named, are defendants by bill of revivor. These defendants, relying upon whatever said George W. Baylor may have set up in his answer therein filed for their defence, and admitting the proceedings therein as of record, and by reference to the papers therein will appear. For answer, admit the decease of their said ancestor, and they are his children and heirs. The require full proof—all and singular the circumstances, allegations, &c. necessary to entitle the plaintiff to a decree. They do not admit, however, but allege, that Benjamin South, in the answer of their ancestor mentioned. never was, as they are advised, executor of John South deceased, and presume, said charge or admission in said answer was made by mistake, as said Benjamin appears to have taken upon himself even more than the authority of an executor. They being infants rely upon the justice of this honorable court, and pray to be hence dismissed with their costs.

WM. M. BAYLOR,
For the heirs of G. W. Baylor, deceased.

November term, 1828, sworn to in open court.
Attest: JNO. H. HANNA, *Clerk.*

[*Leave to take depositions.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, came the parties aforesaid by their counsel, and on motion of the complainants, leave is given either party to take depositions generally herein, upon giving to the adverse party legal notice of the time and place of taking the same.

[*Leave to retake depositions.*]

And on the further motion of the complainants, leave is given them to retake the depositions of William S. Bowling and Benjamin Mills, and it is agreed that notice to Boone Ingles, agent

for the complainants, and to William Baylor for the defendants, shall be sufficient.

[*Order of survey.*]

And afterwards, to wit, at the November term of the court aforesaid, in the year 1828, on motion of the defendants, and by consent of the complainants, (by counsel,) it is ordered, that Zachariah Eastin, of the county of do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same, as either party may direct; having due regard to all deeds and other evidence that may be produced; report all matters of fact specially, and return one fair plat and certificate thereof into the clerk's office of this court, thirty days at before the day of trial. And the marshal, or one of his deputies, is directed to attend the said survey, to remove force should

[*Leave to file answers.*]

And afterwards, to wit, at the May term of the court aforesaid, in the year 1829, (until which time this cause was continued,) it is ordered, that this cause be continued until the next term of this court and leave is given to South's heirs to file their answer herein.

[*Leave to file answers of South's heirs.*]

And afterwards, to wit, at the November term of the court aforesaid, in the year 1829, (until which time this cause was continued,) came the parties aforesaid, by their counsel, and, on motion of the complainants, it is ordered, that the defendants, the heirs of John South, whose answers, it appears, was once prepared, and is mislaid, have leave to file another, on or before the day of next, and it is ordered, that this cause stand for hearing at the next term of this court; leave, however, is reserved to the defendants to plead to the jurisdiction of this court, in such manner as would be admissible, if the cause was remanded to the rules; and this cause is continued until the next term of this court, for and at the cost of the complainants.

[*Guardian appointed to heirs of South.*]

And afterwards, at a subsequent day of the term and year aforesaid, (to wit, November term, 1829,) on motion of the complainants, by their counsel, it is ordered, that Samuel South be appointed guardian, *ad litem*, to the infant heirs of John South, deceased, leave being reserved to the defendants, at the next term, to object to the regularity of said appointment.

[*Answers of South's heirs.*]

The following answers were filed by South's heirs, to wit:

The answer of John South, Moses Davidson, and Parthenia his wife, James Eastin, and Theodocia his wife, David Hudson, and Judeth his wife, Amos Baker, and Sarah his wife, Elgiva South, Margaret South, Thomas South, and John Rogers, Elizabeth Rogers, Parthenia Rogers, Jane Rogers, and Adam Rogers, the five latter being infants, and answering by Samuel South, their guar-

dian, for that purpose appointed, to a bill in chancery exhibited against them and others, in the circuit court of the United States for the district of Kentucky, by Sarah Boone and others, complainants.

These defendants, saving, &c., say, that they do not know or believe that they have any right, title, or interest, in the tract of land in the bill of the complainants mentioned, or any part thereof, and they therefore disavow all claim thereto, being content that the complainants shall have such decree as may be just and equitable against the other defendants. They are informed, it is true, and they believe, that their deceased father once, supposing that he had some title to the property, made a contract for sale to some of the defendants; but that contract, they understand, has long since been cancelled. These defendants deny fraud, and pray to be hence dismissed, with their costs, &c.

Adam Rogers, James Eastin, Moses Davidson, Amos Baker, David Hudson, Elgiva South, Margaret South, Thomas D. South, John South.

[*Answers of John South and others.*]

The answer of John South, Thomas South, Margaret his wife, Elgiva South, Thomas D. South, heirs of John South, deceased, to a bill in chancery filed against them and others, in the seventh circuit court of the United States, and district of Kentucky, by the heirs of Thomas Boone, deceased.

These respondents, saving and reserving to themselves all manner of exceptions to said bill, for answer thereto, or to so much thereof as they are advised is material for them to answer unto, say, that they have no manner of interest in the subject matter of controversy in this suit. Their ancestor may, at one time, have had some interest in the land; but they are advised, and believe, he parted with it in the manner charged by the complainants, and they are content that the complainant shall have such decree as he desires. These defendants have nothing by descent from their said ancestor, and disclaim all interest in this suit; and, having answered all that is deemed material, pray to be hence dismissed, with their costs, &c.

John South, Thomas South, Margaret his wife, Elgiva South, Thomas D. South.

State of Missouri, Pyke county, sct.

This day personally appeared before me, the subscriber, a justice of the peace for said county, Elgiva South, Margaret South wife of Thomas South, Thomas South, and John South, and made oath that the statement made and contained in the foregoing answer, so far as come within their own knowledge, and from the best information had from others. they believe them to be true.

Given under my hand, this 24th day of March, 1830.

WILLIS MITCHELL, J. P. P. C. [Seal.]

[*Motion of Baylor's Heirs to file supplemental answer, &c.*]

And afterwards, to wit, at the May term o fthe court aforesaid, in the year 1830, (until which time this cause was continued,) came the heirs of George W. Baylor, by their counsel, and

moved the court to file a supplemental answer, charging the reversal of the decree of the Bourbon circuit court, in the case of Wm. Chiles, and Thomas Boone, George and H. Boone, *vs.* Hoy's heirs, referred to in complainants' bill, and Jesse Bledsoe suggested to the court, that Joseph Henry Bledsoe had intermarried with one of the heirs of George W. Baylor, since the commencement of this suit, and, by consent of parties, the said Joseph Henry Bledsoe is made a co-defendant with the heirs of the said George W. Baylor; and the court being now sufficiently advised of and concerning the motion of the defendants, the heirs of George W. Baylor, to file a supplemental answer herein, do order

[*Answer of Baylor's Heirs filed.*]

that they have leave to file said answer, which is done accordingly; and, by consent of the complainants, the same is received without oath being made thereto; and this cause came on to be heard, and the question of jurisdiction arising in the cause, upon the argument, the court is of opinion that Hoy's heirs are necessary parties to this suit.

[*Answers of Baylor's Heirs.*]

Which answer is as follows, to wit:

The supplemental answer and answers of Joseph Henry Bledsoe, and Mary Jane Bledsoe his wife, late Mary Jane Baylor, and Walker Baylor and Sophia Baylor, children and heirs of George W. Baylor, deceased, to a bill of revivor filed against them, said heirs, in the circuit court of the United States, for the seventh circuit, composed of the Kentucky district, by the heirs of Thomas Boone. These defendants, the infants Walker and Sophia, by their guardian *ad litem*, specially appointed for that purpose, William M. Baylor, further say, that, since the filing of the original bill of complainants herein, to wit, at the term of the court of appeals for the said State of Kentucky, the said suit in the Bourbon circuit court, in the complainants' bill referred to, wherein said Thomas Boone, George Boone, Hezekiah Boone, and William Chiles, were complainants, and Hoy's heirs defendants, which had, by writ of error, been taken, by said defendants, to said court of appeals, the said decree, in said suit of the Bourbon circuit court, was reversed, set aside, and held for naught, as by the opinion and decree of said court of appeals, an attested copy of which is hereto annexed, and referred to, as part of this answer, will more fully and at large appear, and which suit is still pending in the Bourbon circuit court, by which reversal of said decree the title to said land, thereby decreed to be conveyed, and which, by a commissioner, by said circuit court appointed, had been conveyed, was revested in said heirs of said Hoy, party to said suit, as they are advised, and who ought, of necessity, as they are further advised, to be made parties to this suit, wherefore they pray, &c., as before prayed. BLEDSOE, for *Baylor's Heirs.*

And afterwards, to wit, at a subsequent day of the term and year aforesaid, it is ordered by the court, that the complainants have until the first day of the next term of this court, to file an amended bill in this cause, making Hoy's heirs defendants to this suit, and to obtain the answers of said Hoy's heirs; or, on failure thereof, that the complainants' bill shall stand dismissed without prejudice.

The following is the amended bill filed by complainants, making Hoy's heirs defendants, to wit:

[*Amended bill* vs. *Hoys heirs.*]

To the honorable the judges of the United States for the seventh circuit and district of Kentucky, in chancery sitting: Lincoln Boone, &c., heirs at law of Thomas Boone, deceased, in addition to the allegations of the bills and amended bills of the said Thomas and themselves, on file in your honorable court, against William Chiles and others, would state, that the decree of the Bourbon circuit court, obtained by the defendant, Chiles, in the name of himself, Thomas Boone, &c., was at the term of the court of appeals, 182 , by the order and judgment of that court, in due form pronounced, reversed and set aside, as will more fully appear by reference to the copy of said judgment of that court on file herein.

That William Hoy has long since departed this life, leaving heirs at law, Jones Hoy, Rowland Hoy, William Hoy, Elizabeth South, Parthenia Sappington, wife of John Sappington, Theodocia Hoy, Celia Newland, wife of John Newland, and Fanny Hoy, citizens of the State of Kentucky, upon the title to said tract descended. That the defendant, Chiles, fraudulently, and with full knowledge of the equitable interest of the ancestor of these complainants, obtained a conveyance of the title of William Hoy, the son, and Parthenia Sappington, and her said husband, and Celia Newland and her said husband. That Rowland Hoy has also departed this life, intestate, and without issue, and his share, consequently, passed to his brothers and sisters aforesaid. That Theodocia Hoy having married Lawrence Flournoy, she and her husband have both departed this life, leaving Hoy Flournoy, Jones Flournoy, and Solomon Flournoy, her children and heirs at law, likewise citizens of Kentucky. That Elizabeth South, on the 13th day of July last, by deed, and in due form, conveyed her interest and title to your complainants. That Fanny Hoy is an idiot from her birth, and incapable of making a conveyance in person.

The complainants pray, that the said heirs of William Hoy yet living, except those whose shares are acquired as aforesaid, and the said Elizabeth South, and the said Hoy Flournoy, Jones Flournoy, and Solomon Flournoy, be made defendants to this bill, and the original bill, and amended bills, aforesaid, and true answer make thereto.

These complainants pray, that such of the defendants as have claim, possession, or interest in the said tract of land, be compelled to convey and surrender the same, with such other relief as prayed in their former bills, and such as their case may require, &c. &c.

CRITTENDEN, &c.

Chancery subpœna on amended bill, to wit:

[*Chancery subpœna.*]

[L. s.] The United States of America to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Fanny Hoy, Hoy Flournoy, Jones Flournoy, and Solomon Flournoy, citizens of the State of Kentucky, to appear before the judges of our seventh circuit court of the United States in and for the Kentucky district, at the capitol in Frankfort, on the first Monday in November next, to answer a bill in chancery, and amended bills, exhibited against them by the heirs of Thomas Boone, deceased; and this they shall in nowise omit, under the penalty of four hundred dollars each, and have then there this writ In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 19th day of August, 1830, and of our independence the 55th year.

Attest: JNO. H. HANNA, C. C. C. K. D.

Marshal's return. to wit:

Executed on Fanny Hoy, August 26th, 1830, and the other defendants not found.

A. B. MORTON, D. M. K. D.

[*William Chiles' plea filed.*]

And afterwards, to wit, at the November term of the court aforesaid, in the year 1830, (until which time this cause was continued,) came the defendant, William Chiles, by his counsel, and filed his plea to the complainants' amended bill, making Hoy's heirs defendants, which said plea is ordered by the court to be set down for hearing.

[*Order made at last term rescinded.*]

and, on motion of the complainants' counsel, it is ordered, that so much of the order made in this cause, at the last term, as required the complainants to obtain the answers of Hoy's heirs, be rescinded.

The special plea of William Chiles to a bill, and amended bills, in chancery filed against him and others, in the circuit court of the United States for the district of Kentucky, by Lincoln Boone and others, calling themselves heirs of Thomas Boone, deceased, this defendant, saving and reserving, &c., and not confessing any of the matters stated in said amended bills, states, that he is not bound further to answer to said suit, or original or amended bill thereof, because, he saith, that this court hath not jurisdiction of the proper parties thereto, to render a decree herein affecting the rights of this defendant; and that on account of the following defect of parties: for he saith that, in addition to the children and heirs of William Hoy, there was another daughter, named Kezia Hoy, who intermarried with a certain Hugh Brown, by whom she had eight or nine children, and she has departed this life, and her children are still living, and are residents and citizens of the State of Ohio at the time of filing said amendment, and yet are such; and that said Jones Hoy, named in said amended bill, is now, and was at the time of the amendment, a citizen and resident of the State of Missouri. That said Theodocia Hoy, named in said amended bill, is dead, after her intermarriage with Lawrence Flournoy, and that she has left the three sons named in the amended bill, and one other named Rowland Flournoy, and three of them named, to wit, those named in the amended bill of the complain-

ants, are citizens and residents of the State of Missouri; and the heirs of said Elizabeth South, heretofore made defendants, to wit,

are citizens and residents of said State of Missouri; and this defendant further saith, that, before the commencement of this suit, a suit in chancery was brought in the Bourbon circuit court, for State of Kentucky, in the name of said Thomas Boone, ancestor of present complainants, and others, against the heirs of said William Hoy, in which a decree was rendered against the said heirs of William Hoy, which decree was afterwards reversed in the court of appeals for the State of Kentucky, and the cause remanded for further proceedings in the inferior court, wherein the heirs of said Thos. Boone have filed their bill of revivor, and the cause is still pending in said court, which has competent jurisdiction thereof; and this defendant annexes to this plea, as part thereof, the first and additional record of the new proceedings therein, so far as they have now progressed, duly exemplified, as part of this plea; and he avers, that the equity, and matters and things, attempted to be litigated in this suit, are the same now in contest in the Bourbon circuit court, and not other and different; wherefore, he insists, that, for these causes, the bill of the complainants ought to be abated and dismissed; and, as in duty bound, &c.

WM. CHILES.

[*Answer of Jones Hoy.*]

The following answer was lodged herein 16th day of September, 1830:

The answer of Jones Hoy to a bill in chancery exhibited against him and others in the circuit court of the United States for the district of Kentucky by the heirs of Thomas Boone, deceased, complainant. This respondent saving, &c. for answer, &c., says, that he has no interest in equity to the tract of land in the bill mentioned, and does hereby disclaim the same; he is unwilling to incur expense, but is content that the court shall decree in such way as may be just. He denies fraud, and prays to be dismissed with his costs, &c.

JONES HOY.

The commonwealth of Missouri, Howard county, sct.

This day Jones Hoy subscribed his name to the foregoing answer, and made oath before me, a justice of the peace, in and for said county, that the facts in the foregoing answer are true. Given under my hand this first day of September, 1830.

WILLIAM HARGES, J. P.

This day came Jones Hoy before me, a justice of the peace in Howard county, in the State of Missouri, and made oath that the above instrument of writing, given under my hand this first day of September, 1830.

WILLIAM HARGES, J. P.

[*Plea submitted, and time.*]

And afterwards, to wit, at the May term of the court afore-

said, in the year 1831, (until which time this cause was continued,) came the complainants by their counsel, and the defendant, William Chiles by his counsel, and submitted to the court, the plea of the said Chiles filed herein; and the court, not being advised of and concerning the same, took time.

[*Leave given Chiles to file another answer.*]

And afterwards, at a subsequent day of the term and year aforesaid, the court being now sufficiently advised of and concerning the plea of the defendant Chiles, filed herein to the jurisdiction of the court, do consider that the same be adjudged insufficient, and that the said Chiles have leave to answer over, and that he file his answer within ninety days from this time, and this cause is to remain upon the issue docket.

[*Answer of Hugh Brown.*]

The following answer of Hugh Brown was filed herein, on 26th July, 1831, to wit:

The answer of Hugh Brown to a bill in chancery in the circuit court of the United States for the seventh circuit, and district of Kentucky, exhibited against him by Thomas Boone's heirs, which said Boone's heirs is *plaintiff*, and William Chiles and Hoy's heirs are defendants.

This respondent, in answer thereto, to as much as he is advised is expedient for him to answer, answers and says, it is true, as alleged in the plaintiff's bill, that he intermarried with Keziah Hoy, one of the children and heirs of William Hoy, but that she is now deceased, having died on the 4th day of October, 1823; and that in her right he became possessed, as he believed, in one tenth share of the land which complainant mentions in his bill, as having been sold by said Hoy, which said share, together with three other shares, this respondent sold to Robert Trabue, but that this respondent's wife never joined this respondent in any conveyance to said Trabue. This respondent would state, that he had issue by his marriage with Keziah Hoy, viz: John, Eliza, Henry, Peggy, Edward and Sally, who are now alive. This respondent would refer to his contract with Trabue, a copy of which he makes part of this answer, marked (A), for a full statement of the contract between them.

This respondent would state, that he does not deny but that he knew of the claim of Boone's heirs to the said tract of land before he sold his interest to said Trabue; for he sold without general warrantee said claim. Your respondent, as far as he is advised with respect to the title set forth by said plaintiff, does not gainsay it as coming through Searcy and Martin to said Hoy, and Hoy's having obtained the patent to said land, but that individually he does not know any thing as to the contract between said Boone and Hoy, never having seen it, and only knowing of it by information.

This respondent would state, that he does not consider himself bound in any manner to defend said suit, he having no interest in the same, and having fully answered, prays to be dismissed with his costs, and in duty bound he will ever pray, &c.

This day, personally appeared before me a justice of the peace in and for Fairfield county, State of Ohio, Hugh Brown, and made oath, that whatever he has stated from his own knowledge in the foregoing answer, is true, and whatever he states from the information of others, he believes to be true. Given under my hand and seal this 27th day of June, 1831.

JOHN PEETEELS, J. P.

F.

[*Answer of William Chiles to amended bill.*]

The answer of William Chiles to the amended bill of Lincoln Boone and others, styling themselves heirs of Thomas Boone, filed against him and others in the circuit court of the United States, for the seventh circuit and district of Kentucky:

This deponent, saving and reserving, &c. for answer to so much of said amended bill as he is advised to be material, says, that he admits it to be true, that the decree of the Bourbon circuit court obtained by him, has been reversed by the appellate court, for want of proper parties to the bill, and the cause is sent back for further proceedings, and this defendant amended his bill in the Bourbon circuit court, making proper parties, and the present complainants also amended said bill, making Hoy's heirs therein parties, and *and* involving and setting up the same equity which they have done in the present amended bill. This defendant avers that before the present amended bill as appears by this record, there was no controversy pending here between the complainants and Hoy's heirs, and this defendant claiming by any of his conveyances under them, and the controversy as to them began here at the filing this amended bill for the first time. But as appears by the record of the Bourbon circuit court herewith filed, by an amended bill *then* the complainants had set up the same equity and same matter of controversy, and this defendant insists on that matter as an abatement here, or at least that the court here shall put said complainants to their election as to which they will pursue, and prays that they be compelled to dismission at least. He admits that William Hoy has long since departed this life, having previously made his last will and testament, as by a copy thereof will appear and he devised his estate to his children Jones Hoy, Rowland Hoy, Elizabeth South, then wife of John South, Parthenia, now the wife of John Sappington, Theodocia, the wife of Lawrence Flournoy, Celia, now the wife of John Newland, Fanny Hoy, an idiot, still living, and another not mentioned by the complainants, to wit, Kezia, since the wife of Hugh Brown. That Rowland died many years since unmarried, childless and intestate, but of full age, whereby, as your orator is advised, his share passed to his mother, brothers, and sisters, and his mother is still living as far as this defendant is informed, and married to a certain Edward Brown, and she is not made a party. That said Kezia Brown has since died, and has left the following children, to wit, John Brown, Eliza Brown, Henry Brown, Edward Brown, Margaret Brown, and Sarah Brown, none of whom are made parties. That Mrs. Flournoy is also dead, and has left the following children: Hoy B. Flournoy, Jones Flournoy, Solomon Flournoy, and two

others not named, [illegible] made parties in the amended bill, to wit, Lawrence Flournoy and Rowland Flournoy. This defendant admits that for a valuable consideration, he has bought and paid for, and obtained the title of William Hoy; he further admits, that a certain Green Clay bought and received the title of John Newland and wife, and discovering this to be the fact, he caused the said Green Clay to be made a party to the bill in the Bourbon circuit court, charging him with being a guilty purchaser, knowing of the equity arising from the bond of Hoy. But said Clay put in his answer, denying notice, and this defendant not knowing evidence to prove notice, bought of him his share and paid him therefor, and received his conveyance. This defendant refers to the answer of Clay in the record of the Bourbon circuit court as part of this answer, and this defendant insists that Clay was an innocent purchaser for a valuable consideration without notice till his purchase was complete, and as to that part, this defendant in the worst event, is entitled to protection; he admits that he has received a conveyance for a valuable consideration, paid from John Sappington and wife. He insists that this court has not jurisdiction to try and determine the matters in controversy in this suit; he denies that he fraudulently obtained the titles which he holds, either equitable or legal, but insists on his superior claim, and relies on the acquiescence in his claim and the lapse of time, and the staleness of the claim of his adversary; he denies all fraud or combination with which he is charged, and prays to be hence dismissed with his costs in this behalf unjustly expended; he also relies on the previous exercise of the jurisdiction of the Bourbon circuit a competent tribunal over this subject.

Montgomery county, to wit:

William Chiles maketh oath and saith, that the foregoing answer is true to the best of his knowledge and belief. Sworn to before me, a justice of the peace of said county, this 8th day of August, 1831.

L. Y. MILLSPAUGH, J. P. M. C.

[*Motion for leave to amend bill.*]

And afterwards, at the November term of the court aforesaid, in the year 1831, (until which time this cause was continued) came the complainants aforesaid by their counsel, and moved the court for leave to file an amended bill in this cause, which motion is ordered to lay over.

[*Court took time, &c.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, came the parties aforesaid, by their counsel, and the complainants' motion to file an amended bill in this cause came on to be heard, and was fully argued by the counsel for the parties; but the court, not being now sufficiently advised of and concerning the same, took time, &c.

[*Leave to file amended bill; and leave to Josiah Boone to file answer.*]

And afterwards, at a subsequent day of the term and year aforesaid, the court being now sufficiently advised of and con-

cerning the complainants' motion for leave to file an amended bill in this cause, do consider that leave be given the complainants to file said amended bill, which is done accordingly; and leave is given for Josiah Boone to file his answer herein, which is done accordingly; and this cause is to remain on the issue docket; which amended bill is as follows, to wit:

[*Amended bill.*]

To the honorable the judges of the circuit court of the United States for the seventh circuit and district of Kentucky:

Richard Boone, &c., heirs of Thomas Boone, would shew in amendment to their bill, on file in your honorable court, against William Chiles and others, that all of the heirs of Hezekiah Boone are citizens of, and reside in, States other than Kentucky, except Isaiah Boone; and, therefore, your complainants are advised they cannot proceed against the said non-residents; and the depositions of Josiah Boone and William Cunningham aforesaid have been taken, and are now on file in this cause.

CRITTENDEN, &c.

[*Answer of Josiah Boone.*]

The separate answer *answer* of Josiah Boone to a bill in chancery, exhibited against him and others in the circuit court of the United States for the district of Kentucky, by Thomas Boone and his heirs, complainants. This defendant, saving, &c., answers, and refers to his deposition, taken in the suit aforesaid, as part of his answer, which contains all he knows about the matter; and having fully answered, he denies fraud, and prays to be dismissed, with his costs.

ISAIAH BOONE.

Woodford county, to wit:

This day came the above named Isaiah Boone before me, one of the commonwealth justices of the peace for the county aforesaid, and made oath, that what he states in the above answer, from his own knowledge, is true; and what he states from information, he believes to be true. Sworn to before me, this 21st day of November, 1831.

RANDOLPH RAILEY, Jr., J. P.

[*Dedimus awarded, and cause set for hearing.*]

And afterwards, to wit, at the November , 1831, on motion of the defendants, by their counsel, dedimuses are awarded either party herein, to take depositions generally: and it is ordered by the court, that this cause be set down for hearing on the 13th day of the next term.

[*Leave to retake depositions.*]

And afterwards, to wit, at the same term and year aforesaid, on motion of the defendants aforesaid, by their counsel, leave is given them, and a dedimus awarded herein, to retake the deposition of Isaiah Boone and William Cunningham; which depositions are to be subject to exceptions upon the reading of the same.

[*Guardian appointed.*]

And afterwards, to wit, at the May term of the aforesaid , in the year 1832, (until which time this cause was continued,)

came the parties aforesaid, by their counsel; and, on motion of the complainants, John H. Hanna is appointed guardian, *ad litem*, for Fanny Hoy, an idiot: whereupon, said guardian filed her answer herein, which is in the words following:

[*Answer of F. Hoy.*]

The answer of Fanny Hoy, by John H. Hanna, her guardian, *ad litem*, to a bill in chancery, exhibited in the seventh circuit court of the United States of America in and for the Kentucky district, wherein Boone's heirs are complainants and William Chiles, &c. are defendants. This defendant, saving and reserving, &c., for answer, says, she knows nothing of the controversy in this suit, and prays the court to protect her rights, and prays to be dismissed, with her costs.

JNO. H. HANNA,
Guardian, ad litem, for Fanny Hoy.

[*Leave to amend bill.*]

And afterwards, at a subsequent day of the term and year aforesaid, to wit, May term, 1832, came the complainants, by their counsel; and, on his motion, leave is given them to amend their bill herein, by making the heirs of George Boone, and the heirs of Reuben Searcy, defendants, provided the said amended bill be filed within ninety days from this time.

[*Amended bill.*]

The following amended bill was filed in due time, and is as follows, to wit:

To the honorable the circuit court of the United States for the seventh circuit and district of Kentucky, in chancery:

Richard Boone and others, heirs at law of Thomas Boone, in addition to the allegations of their several bills on file against Chiles, others, defendants, would say, that they are now informed, (and have reason to believe *to believe* their information is correct,) that Newland and wife had not conveyed their interest in the tract of land to the defendant, Chiles, at the time of filing their bills in this cause, or any or either of them; and that the allegations of their bill, in this respect, is untrue. But the title of Celia Newland, as it descended from her father, still abides with her: if, however, it shall be found that Newland and wife had conveyed, they charge that their deed was to a certain Green Clay, and that the deed may by Clay to Chiles was predicated upon the assertion of Chiles, that he had right and authority, under Thomas Boone, to receive the same; and was procured by Chiles under the assumed and improper use of the name of the said Thomas, and in virtue of assurances that he had acquired the right of the said Thomas, and not for a valuable or fair consideration actually paid or promised.

Your orators would further state, that the said Reuben Searcy has long since departed this life intestate, without issue or inheritable blood known to them; at least, they are very certain that he has no heirs within the limits of the State of Kentucky.

Your orators would further state, that George Boone, whose name is mentioned in the original bill, has long since departed

this life, and that his next of kin and lawful heirs are Mariam Steele, the wife of Joseph Steele, his daughter, Greenup Simpson, and Matilda, and Eliza, and America, and Sarah, and Erasmus, and George, and James, and Alfred Simpson, his grand children, being the issue of his daughter, and, if there be other heirs of the said G. Boone, as your complainants are certain that they do not reside in Kentucky, grand children of the said George Boone, being the children of Simpson, deceased, who was a daughter of the said George, and died before him; all of whom are citizens and residents of Kentucky, except the said Greenup, Matilda, and Eliza, , and Simpson, who are citizens and residents of the State of Illinois, and William Boone, a son, who is a citizen and resident of Missouri; upon whom his title, if he had any, descended as his heirs at law. Indeed, your orator has reason to believe the said George left other heirs, resident in Missouri and Illinois, but their names he cannot ascertain: of this, however, he is certain, that the said George, deceased, has left no other heirs residents or citizens of Kentucky, nor any who he can make defendants to this suit. He prays that the said Steele and wife, and the said Simpsons, resident as aforesaid in Kentucky, be made defendants, upon whom his interest, if, indeed, he had any by law, descended, and who, with the said Joseph, and the said Newland and wife, are made defendants to this bill; but he is assured, and so charges the fact, that neither George Boone or any of his heirs have asserted, or pretended, any claim or interest in the land, but expressly concede the claim of your orators, as set forth in the original bill. They pray, as set forth in their former bills, &c.

CRITTENDEN, &c.

Chancery supœna on amended bill, to wit:

[*Chancery subpœna on amended bill.*]

[L. S.] The United States of America to the marshal of the Kentucky district, greeting:

You are hereby commanded to summon Joseph Steele and Mariam Steele, his wife, Greenup Simpson, Matilda Simpson, Eliza Simpson, America Simpson, Sarah Simpson, Erasmus Simpson, George Simpson, James Simpson, and Alfred Simpson, heirs at law of George Boone, deceased, and John Newland and Celia, his wife, two of the heirs of William, deceased, to appear before the judges of our seventh circuit court of the United States of America in and for the district of Kentucky, at the capitol, in Frankfort, on the first Monday in November next, to answer a bill in chancery, and amended bills, exhibited against them and others in our said court by the heirs of Thomas Boone, deceased; and this they shall in nowise omit, under the penalty of four hundred dollars each: and have then there this writ.

In testimony whereof, John Marshall, esq., chief justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 31st day of July, A. D. 1832, and in the 57th year of our independence.

Attest:

JNO. H. HANNA, C. C. C. K. D.

Memo. The marshal will not execute this subpœna on Joseph Steele and Mariam Steele, his wife.

BOONE INGLES,
Agent for Tho. Boone's heirs.

Marshal's return, to wit:

Executed on John and Celia Newland, 28th August, 1832.

MOSES M. PRICE, D. M. K. D.

Executed on America, Sarah, George, James, and Alfred Simpson, Sept. 11th, 1832.

THOS. SMITH, Jr., D. M.,
For Jno. M. McCalla, M. K. D.

Executed, Oct. 3d, 1832, on Erasmus Simpson, four miles below Taylorsville; Greenup Simpson, Matilda Simpson, and Eliza not found, being no inhabitants of this district.

EDWIN C. HICKMAN, D. M.,
For Jno. M. McCalla, M. K. D.

[*Answer of Joseph Steele and wife.*]

The following answers were lodged in this cause, to wit:

The answer of Joseph Steele and Mariam Steele, his wife, to a bill in chancery, exhibited against him and others in the circuit court of the United States, district of Kentucky, wherein the heirs of Thomas Boone are complainants, and William Chiles and others are defendants. These defendants, saving, and say, that they have no right or claim in the land in controversy, and are content that relief be decreed the complainants, because they believe it just. They pray to be dismissed, with their costs.

JOSEPH STEELE.
MARIAM STEELE.

August 27th, 1832. Personally came before me, Cornelius Hughes, a justice of the peace for Boone county, and commonwealth of Kentucky, Joseph Steele and Mariam Steele, his wife, and made oath that the answer above contains facts of truth. Given under my hand, the date above.

CORNELIUS HUGHES, J. P. B. C.

[*Joint answer of Newland and wife.*]

The joint answer of John Newland and Celia, his wife, late Celia Hoy, to an original an amended bills in chancery, exhibited against them and others by Thomas Boone's heirs, in the circuit court of the United States of the seventh circuit in and for the district of Kentucky. These respondents, for answer to so much of said bills as they are advised it will be *be* material for them to answer, say, that respondent Celia is the daughter and one of the heirs of William Hoy, deceased, and that she is intermarried with her co-respondent, John Newland. These respondents state, that if ever they had any interest in the land mentioned in said bills, and now in contest herein, that they have long since transferred their int*rest* therein by a writing, amounting to a quit claim, to Green Clay, but they never conveyed the title, by deed, to him or any one else. They further state, that they have no int*rest* whatever in said land; that they assert none thereto; and that they are willing the court should decree said land to whomsoever is equitably entitled thereto: and having fully answered,

the ask for general relief, and to be hence dismissed, with their costs, &c.

State of Kentucky, Madison county, sct.

The undersigned, acting justice of the peace for the county aforesaid, certifies, that on this day personally appeared before me John Newland and Celia, his wife, and each made oath that the facts stated in their within answer, are true. Given under my hand this 10th of September, 1832.

HENRY B. HAWKINS, J. P.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1832, (until which time this cause was continued) came the defendant, William Chiles, by his counsel, and tendered to the court the following bill of exceptions, which was signed and seal by the court, and ordered to be filed and made a part of the record, which bill of exceptions is as follows, to wit:

[*Bill of exceptions by defendant Chiles.*]

"Be it remembered, that on the present day of the term, the complainants obtained leave of the court to amend their bill within 90 days from the present term, as will appear by said order for amendment, whereupon the defendant, Chiles, by his counsel, moved the court to remand the said cause to the rules; but the court refused to remand the cause to the rules, to which refusal the defendant, Chiles, excepted, and prays the court to sign and seal this his bill of exceptions, which is done accordingly.

JOHN McLEAN. [SEAL.]

[*Cause came on; not time to try, laid over.*]

And afterwards, to wit, at the May term of the court aforesaid, in the year 1833, (until which time this cause was continued) came on to be heard this cause, upon the bill, answers, depositions, &c., but there not being time to go through with the argument, it is laid over until to-morrow. And afterwards, at a subsequent day of the term and year aforesaid, to wit, May term,

[*Clerk to ascertain value of improvements and rents, &c.*]

1833, ordered that the clerk, as master, ascertain and report to this court at its next term the value of all permanent and useful improvements made on the land occupied by the defendants, and claimed by the *plaintiffs*, and also that he report the value of the annual rents of such improvements, from the time they were made.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1833, (until which time this cause was continued,) this day the defendants filed their exceptions to the opinion of the court in overruling the objections to the reading of the deposition of Jonathan Jones. And afterwards, at a subsequent day of the term and year aforesaid, (November term, 1833,) came the defendant, Nicholas Smith, by his attorney, and moved the court for leave to file an amended answer, but the court not being advised, took time, &c.

[*Leave to file amended answer, and reply to answer.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, to wit, November term, 1833, the court being now sufficiently advised of and concerning the defendant, Nicholas Smith's motion to file an amended *bill*, herein do consider that the said Smith have leave to file his said amended answer *answer*, which is done accordingly; and for replication the complainants say that the statement in the said amended answer, so far as they contradict the allegations in their bill, are untrue, and that the allegations in their bill are true.

The following agreement is ordered to entered, to wit:

[*Agreement.*]

It is agreed, that the copy of the bond and assignments thereon filed this term, with the answers of the defendant, Smith, is a correct copy of the original, the last assignment being in the hand writing of George Boone, and to have been made by him,—to have the same effect, and no more, as if proved to have been made by him; that the copy exhibited, with the same answer, at this term, of the agreement between Thomas Boone and Boone Ingles, is a true copy of that agreement, and to have the same effect that the original would have, if it were produced and proved, and that the cause be heard at the present term.

CRITTENDEN, &c., *for complainants.*

[*Motion to dismiss suit.*]

Whereupon the defendants moved the court to dismiss this suit, because the same is carried on by a certain Boone Ingles, a citizen of the State of Kentucky, under a contract of champarty and maintainance, contrary to the law of the land and rules and usages in courts of chancery.

[*Amended answer of Smith's.*]

The amended answer of Nicholas Smith, jr. to the original answer filed by him in conjunction with Nicholas Smith, sen., George W. Baylor, &c., to the several bills, original and amended, filed in the circuit court of the United States for the seventh circuit, composed of the district of Kentucky, by Thomas Boone, and revived by his representatives against *him* and others: This defendant, referring to the said original answer, would state that although it is herein charged that said Thomas Boone, the original complainant, had, as the said defendants were informed and believe, made with a certain Boone Ingles, the active agent, institutor and manager of this suit, at his instance and by his procurement, a corrupt or unlawful agreement of champarty and maintainance, as in said answer is more at large specially alleged.

This respondent begs leave now, in addition, to state that since the last term of this honorable court, he has for the first time discovered the certainty that such an agreement in writing between said Thomas Boone and said Boone Ingles does exist, and was, on the acknowledgment of said Boone Ingles, recorded in the clerk's office of the Bourbon county court, an attested copy whereof (if the original, which is now here, he is informed, in said Boone Ingles's possession, as he has acknowledged within a

day or two, together with the power of attorney in the agreement mentioned, is not filed,) is referred to, and if said original and power of attorney be filed, he refers to them as parts of this amended answer. From which said agreement it will appear, that but for the agency of said Boone Ingles, which this defendant charges to be the fact, the tenants in possession of the premises in controversy would never have been harassed by the stale, dormant, and pretended claim of said Thomas Boone, and from which said agreement it appears that said Thomas Boone was unwilling to hazard the investigation of his claim to said 700 acres of land in this suit, or any other, unless he could get said Boone Ingles, or some other champartor and maintainor, for a share of the land, whether justly or unjustly obtained, after time had obliterated the truth of facts and swept away the evidence, to establish them at his own costs and charges, to endeavor to obtain the said land and disturb the bones of the ancestors of some, if not most, of the tenants in possession, which repose on the premises. This defendant is advised that under these circumstances the court would not permit the said Thomas Boone, or his legal representatives, the present complainants, to have its decree in their favor. This defendant also states, that he has, on yesterday, for the first time, discovered that there is in existence a true copy of the original bond from Searcy to Hoy, for the conveyance of said 700 acres of land in controversy, which was assigned by said Hoy to George Boone, and claimed to be assigned by him *assigned* to Thomas Boone, which bond is said to have been lost from out the Bourbon circuit court clerk's office, and the copy of which bond is attempted to be set up by complainants, together with said two assignments, which alone appear thereon; but this copy now exhibited, which was taken before the erasure of the last assignment by George Boone to John South, shews an assignment from Geo. Boone as attorney in fact for said Thomas Boone, to John South, under whom all the tenants in possession, including this defendant, claim their several portions of said 700 acres of land, which assignment bears date August 6th, 1792, and if ever said John South, as executor of William Hoy, had previously sold any portion of said 1,400, or of the moiety, 700 acres, claimed by complainants herein for this 700 acres, was never defered to any of the original purchasers previous to said assignment, which is not admitted, this defendant relies confidently that said assignment last mentioned of said bond to him, said South, would inure in equity to confirm their claims, nor could its subsequent cancelment or the surrender of said bond by the assent of the executor or administrator of South, effect or impair their claims. He re-exhibits here with said copy of the bond, with the several assignments thereon, and refers to the last one especially as part of this answer, which copy is marked X; and this defendant, if time is granted him, expects to be able to verify the same, and he relies upon both time and circumstances, to shew that said last assignment of said bond, by George Boone to John South, as attorney in fact for the said Thomas Boone, was done by proper authority by him, the said Thomas Boone, to him the said George Boone, given as his acquiescence for 20 years or upwards therein, and as he charges, having never listed or paid tax therefor, tends strongly

to shew the same, all which facts herein set forth, this defendant is advised, are material to his defence. He therefore prays, if it is according to the course of proceedings, that said B. Ingles be made party hereto, and be compelled to answer the premises on oath, and file the said original paper, and for a continuance of this suit, to the intent he may take proof; and if the court will still entertain jurisdiction herein, he prays to be dismissed on final hearing.

November term, 1833. Sworn to in open court.

Attest: JNO. H. HANNA, C. C. C. K. D.

[*Agreement with Thomas Boone and Ingles.*]

The following is the agreement referred to, and filed with the foregoing answer, to wit:

Whereas, a certain Reuben Searcy, of the State of Kentucky, formerly sold to a certain William Hoy, of said State, 700 acres of land in the county of Bourbon, then Fayette, on Stoner's fork of Licking, then called Licking creek, in said State of Kentucky, between Martin's station and Ruddle's station; it being part of a settlement and pre-emption of 1,400 acres, which John Martin cleared out on the halves for said Reuben Searcy, and the said Searcy, on the 24th of September, 1781, gave his bond to said Hoy for the conveyance of said 700 acres; which bond was assigned by said Hoy to a certain George Boone, who, on the 30th day of April, 1783, assigned the same to said Thomas Boone, who hath never assigned the same but delivered it out of his possession for the purpose of having the legal title procured to him, which was never done; but said Hoy, after the assignment aforesaid, obtaining a patent for the whole of said 1,400 acres in his own name, and whereas the said Thomas Boone did, on the 30th day of November, in the year 1802, by articles of agreement of that date made between him and a certain Hezekiah, the *the* said 700 acres of land on recovery therefore within 4 years, the sum of 700 pounds at the choice of said Hezekiah, within said four years to take or not to take said land, and the said Hezekiah *and* did not within 4 years make known his choice or pay to said Thomas any part of said 700 pounds; whereby, as said Thomas believes, the said Hezekiah has lost all right and interest in said land under said articles, yet he hath lately caused his right to be asserted in a court, and hath obtained for himself or his assignee the legal title to said 700 acres of land, by using in a suit for that purpose the name of said Thomas as a complainant, without his authority, and the said Thomas being desirous that his right to said land shall be asserted, and that a legal title for the same may be procured to him, or a compensation obtained therefor from the said Hezekiah Boone, or such other person or persons as may be liable to pay the same; now, therefore, this article of agreement made this 23d day of December, in the year one thousand eight hundred and twenty-two, between the said Thomas Boone, of the county of Berks, and State of Pennsylvania, of the one part, and Boone Ingles, of the county of Bourbon, and State of Kentucky, of the other part, witnesseth, that it is agreed by and between the said parties that the said Boone Ingles shall and may investigate the right of said Thomas Boone to the said 700 acres

of land, and commence, prosecute, and controol such suit or suits as he may think necessary to establish said right, and procure the legal title and possession of the same in the name of the said Thomas Boone, and that he may and shall take all other steps which he may be advised are necessary for securing the abovementioned objects, and for obtaining a compensation for the land aforesaid and said Thomas Boone's title thereto; which title he may, should he think it expedient to do so, dispose of by compromise or otherwise: Provided, that whatsoever the said Boone Ingles do in relation to the said land, and said Thomas Boone's right thereto, shall be done at his own proper cost and charges, without any expense to the said Thomas; and the said Thomas Boone doth hereby covenant and agree, that should the said Ingles succeed in obtaining for him the legal title to said land aforesaid, then, in consideration of the expense and trouble which he will be at in doing so, he, the said Thomas; shall and will convey to said Ingles the one equal half of the land for which the legal title is so obtained, without warrant, except against himself and his heirs, as soon as a proper deed for that purpose shall be prepared and presented to him; and in case of success in obtaining the legal title to said land as aforesaid, should it become necessary in order to obtain possession of said land, that the occupants thereon should be paid for their improvements, it is agreed between the parties hereto that the said Ingles shall pay for such improvements as are on *the* that part of the land to be conveyed to him as aforesaid, and said Thomas Boone is to, and shall pay for such improvements as are on the other part of said land; and in case the said Boone Ingles shall, in the investigation of the rights aforesaid, deem it expedient to dispose of the same, or any part thereof, by compromise or sales, and shall actually do so, then he is to pay over to said Thomas Boone the legal half of the proceeds of such sale or compromise, and to r*eturn* the other half for his trouble and expenses as aforesaid, free from the claim or demand of the said Thomas Boone, his heirs, &c., forever; and the said Boone Ingles, in consideration of the premises, agrees and undertakes faithfully to investigate the right of said Thomas Boone to the 700 acres aforesaid, and to take the steps necessary to establish the same as aforesaid, at his own proper costs and trouble, and if in the investigation of the right of the said Thomas as aforesaid, it shall appear that he has departed with his right in and to the land aforesaid, by means of the article of agreement above mentioned between him and the said Hezekiah Boone, so that he cannot recover said land, then it is agreed the said Boone Ingles shall and will proceed by all lawful means to recover from said Hezekiah Boone, or such other person or persons as may be liable, the aforesaid 700 pounds agreed to be paid by said *by said* Hezekiah for said land, without interest thereon, if to be had, and whatsoever sum shall be obtained by such proceedings is to be divided equally between the parties hereto, the said Ingles to retain one half for his trouble and expenses, and to pay the other half to the said Thomas, which the said Ingles undertakes to do, and that he may perform all things proper to be done in the premises, the said Thomas agrees to make to him a proper power of attorney, giving him ample authority.

In testimony whereof, the parties aforesaid have hereunto set their hands and seals this 23dday of December, 1822.

THOMAS BOONE, [SEAL.]
BOONE INGLES, [SEAL.]

Teste:

PETER NAGALE.
S. CHOENER.

COMMONWEALTH OF KENTUCKY, *and Bourbon county*, } *ss.*

I, Thomas P. Smith, clerk of the county court for the county aforesaid, do certify, that this article of agreement between Thomas Boone and Boone Ingles was this day acknowledged before me in my office, by the said Boone Ingles, to be his act and deed; whereupon the same, together with this certificate, hath been duly admitted to record in my office.

Given under my hand this 2d day of December, 1831.

THOMAS P. SMITH,
By ROBERT E. RANKIN, *D. C.*

COMMONWEALTH OF KENTUCKY, *and county of Bourbon*, } *ss.*

I, Thomas P. Smith, clerk of the county court of said county, do certify that the preceding pages contain a full and perfect copy from the record in my office, of the article of agreement between Tho. Boone and Boone Ingles.

Given under my hand this 9th day of November, 1833.

THO. P. SMITH, *clerk.*

And afterwards, to wit, at the November term of the court aforesaid, in the year 1833, the following bill of exceptions was filed herein, to wit:

On the 25th of January, 1823, Thomas Boone filed his bill in chancery in this court as followeth: (Here insert the original bill: see page 1st, for said bill.) The obligation from Searcy to Hoy, assigned to George Boone, and by them to the complainants mentioned in the bill, reads and bears the assignments following: (Here insert them: see page .) And after the commencement of this suit, a writ of error was prosecuted by the parties to the record of the Bourbon circuit court; and the decree in favor of Chiles was reversed and remanded by the court of appeals, with leave to make other parties, and for further proceedings.

The complainant died, and the suit was revived in August, 1830; the complainants amended their bill, shewing a reversal of the decree, and making the heirs of Hoy defendants, and praying a conveyance from them. The complainants also filed an amended bill, making the heirs of John South defendants.

November 16th, 1830.—The defendant, Chiles, filed the following plea in abatement: (Here insert that marked C: see page 73;) which, at the May term, 1831, was overruled. An amended bill was filed against the heirs of Hezekiah Boone, as followeth, to wit: (Here insert that marked D: see page 28.) On the 31st of July, 1832, an amended bill was filed against the heirs of George Boone, in the words following: (Here insert E: see page 106.)

The defendant, Chiles, &c., answer as followeth, to wit: (Here insert F: see page 79.) One of the resident defendants, who were made defendants as heirs of George Boone, answered, disclaiming any interest in the land; and there is no proof that they, or either of them, are or are not the heirs of George Boone. The cause being prepared, and heard upon the bills, answers, depositions, and exhibits, and the court suggesting that the last mentioned amended bill was defective, the attorney of the complainants asked leave and amended their bill as followeth: (Here insert it as it now stands: see page 86.) 1st. The court being then divided, and the judges opposed in opinion as to the jurisdiction over the case; and unable *and unable*, therefore, to render a decree on the merits, they resolve to adjourn that question to the Supreme Court, to wit, under all the circumstances appearing as above, can this court entertain cognizance of the case? 2d. The judges were also opposed in opinion, on the point whether the complainants were entitled to a decree in the absence of any proof that the persons made defendants, in the amended bill, as heirs of George Boone, were in fact his heirs? both of which points accrued, and became material to the decision of this case.

Memo.—In this case, after the court had heard the cause on its merits, and had intimated, at a former day of the term, that the court had not jurisdiction, by reason of the heirs of George Boone not appearing upon the bill, to be within the jurisdiction of the court; and to-day the complainants moved the court to amend their bill, and to allege the citizenship of Boone's heirs; which motion was granted by the court: whereupon, the defendant's counsel moved the court to remand the case to the rules, and that defendants have leave to file their answers or pleas to the amendment thus allowed; but the court overruled the motion of the defendant to remand the cause to the rules; and, dividing in opinion as to the jurisdiction of this court over the cause, after the amendment was made, directed the question of jurisdiction to be adjourned to the Supreme Court: to which opinions of the court, in permitting the amendment after the cause was heard, and in not remanding the cause to the rules, for the defendants to answer as to said amendment, and in adjourning the question upon the state of pleadings in the case, the defendants, by their attorney, excepts and prays the court to sign and seal this their bill of exceptions.

SEAL.

JOHN BOYLE, [SEAL.]

[*Amended bill*, E.]

The following is a copy of the amended bill, as before it was scored, to wit:

To the honorable the circuit court of the United States for the seventh circuit, and district of Kentucky, in chancery:

Richard Boone and others, in addition to the allegations of their several bills on file against William Chiles and others, defendants, would say, that they are now informed (and have reason to believe their information is correct) that Newland and wife had not conveyed their interest in the tract of land, to the defendant, Chiles, at the time of filing their bills in this cause, or

any or either of them, and that the allegations of their bill, in this respect, is untrue; but the title of Cecelia Newland, as it descended from her father, still abides with her.

If, however, it shall be found that Newland and wife had conveyed, they charge that their deed was to a certain Green Clay, and that the deed made by Clay to Chiles was predicated upon the assertion of Chiles that he had right and authority, under Thomas Boone, to receive the same, and was procured by Chiles, under the assumed and improper use of the name of the said Thomas, and in virtue of assurances that he had acquired the right of the said Thomas, and not for a valuable or fair consideration actually paid or promised.

Your orators would further state, that the said Reuben Searcy has long since departed this life, intestate, without issue or inheritable blood known to them; at least they are very certain that he has no heirs within the limits of the State of Kentucky.

Your orators would further state, that George Boone, whose name is mentioned in the original bill, has long since departed this life, and that his next of kin and lawful heirs are Mariam Steele, the wife of Joseph Steele, his daughter, and Greenup Simpson, and Matilda and Eliza and America and Sarah and Erasmus and George and James and Alfred Simpson, upon whom his interest, if indeed he had any, by law descended, and who are made defendants to this bill: but he is assured, and so charges the fact, that neither George Boone, or any of his heirs have asserted or pretended any claim or interest in the land, but expressly concede the claim of your orators, as set forth in the original bill.

They pray as set forth in the original bill, &c.

CRITTENDEN, &c.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1834, until which time this cause was continued, came the complainants by their counsel, and produced the following mandate, which is ordered to be entered, to wit:

[*Mandate from the Supreme Court on the adjudged questions.*]

Supreme Court of the United States.

January Term, 1834.

THOMAS BOONE'S HEIRS, *Complainants*,
against
WM. CHILES, and others, *Defendants*,

on a certificate of division in opinion between the judges of the circuit court of the United States for the district of Kentucky.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Kentucky, and on the questions and points on which the judges of the said court are opposed in opinion, and which was certified in this court for its opinion, agreeably to the act of Congress in such cases made and provided, and was argued by counsel, on consideration whereof the court is of opinion,

1st. That under the circumstances stated in the certificate of the judges, the said circuit court could entertain cognizance of the case. 2d. That the want of proof that the persons made defendants in the amended bill, as the heirs of George Boone, were,

in fact, his heirs, is no obstruction to a decree on the merits of the cause; all of which is hereby ordered and adjudged to be certified to the said circuit court under the seal of this court, and the same is accordingly hereby certified. March 19.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the foregoing is a true copy of the decision of said Supreme Court made in said cause, at January term, 1834. Extracted from the minutes of said Supreme Court.

In testimony whereof, I hereunto subscribe my name, and [L. S.] affix the seal of said Supreme Court this 21st day of April, in the year of our Lord one thousand eight hundred and thirty-four.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

[*Motion to file an additional answer; court took time, &c.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, (to wit, May term, 1834,) the defendants moved the court to file an additional answer; but the court, not being advised, took time, &c.

[*Motion overruled.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, the court being now sufficiently advised of and concerning the defendants' motion to file an additional answer, do order that the same be overruled.

And afterwards at a subsequent day of the term and year last aforesaid, (to wit, May term, 1834,) came the defendants by their counsel, and filed the following bill of exceptions, to wit:

[*Bill of exceptions.*]

Be it remembered, that on the seventh day of the present term of this court, the defendants petitioned the court, and offered to file an amended answer of the defendants in the words following, (here insert it, see page 113.) To the filing of which the complainants objected; which objection was sustained by the court, to which opinion of the court in sustaining said objections, and refusing said defendants to file their said amended answer, the defendant then excepted, and now prays that this their bill of exceptions be signed, sealed, and enrolled, which is allowed.

JOHN McLEAN, [SEAL.]

[*Motion to file petition and record filed.*]

And afterwards, to wit, at a subsequent day of the term and year aforesaid, (May term, 1834,) came Nicholas Smith by his counsel, and moved the court to file a petition to suspend the entering of a final decree, and also presents the record referred to in his amended answer filed at the present term.

[*Smith's motion for rehearing overruled.*]

And afterwards, to wit, at the May term as aforesaid, in the year 1834, the court being sufficiently advised of and concerning the defendants' (Smith's) motion to file a petition for rehearing,

do consider that the same be overruled; whereupon the court pronounced the following decree:

[*Final decree.*]

This cause being heard on the bills, answers, replication and exhibits, and the court finding the material allegations of the bill mentioned by the evidence, do decree that the defendant, Chiles, do, on or before the tenth day of July next, release by deed duly executed, with special warranty against all persons claiming under him to the complainants all his right, title, and interest in the premises named in the bill, except the interest which he holds under a deed from Green Clay, who appears to have been a purchaser for a valuable consideration of the undivided interest of Newland and wife, heirs of Hoy, without notice of the complainants' equity; and the said Clay afterwards conveyed the same interest to the defendant, Chiles. It is further ordered and decreed, that the defendant, Chiles, shall, on or before the day aforesaid, deliver to the clerk of this court, to be cancelled, a contract under which he claims, made between Hezekiah Boone and George, as attorney in fact for Thomas Boone for the land claimed by the complainants, as it appears the said George Boone was not authorized to make such contract, and it also appears that Hezekiah Boone never complied with the conditions of said contract.

And the court further orders and decrees, that Jones Hoy, and Fanny, her guardian, *ad litem*, do, on or before the day aforesaid, convey to the complainants, by deeds duly executed, all their interest in the premises described in the bill, which they derived by devise or otherwise, from their ancestor, William Hoy, with special warranty against all persons claiming under them. And the court, further orders and decrees, that the tenants in possession, who are made parties to this suit, do pay unto the complainants on or before the first day of January next, one half of the amount of a reasonable rent for the time they occupied their respective tenements, after deducting a reasonable compensation for one half of the improvements; and as it does not appear what amount of rents each tenant should pay, after deducting the value of his improvements, the clerk and master is directed to make report of the respective amounts at the present term, that a decree may be entered accordingly.

It is further decreed, that on the first day of January next, a writ of possession do issue, to put the complainants into possession of the premises to the extent of the interest decreed; and the report of the clerk and master being now made in pursuance of the above order, and it appearing from said report, that Jacob Smeltzer, one of the defendants, has been paid for his improvements out of the rents and profits, and that he should pay thirty-three dollars and fifty cents; that Nicholas Smith should pay three hundred and eighty-three dollars and fifty cents; and that Joseph H. Bledsoe, and Mary Jane, his wife, Sophia Baylor, Georgeann Baylor, and Walker Baylor, who appear by their guardian, William M. Baylor, all of whom are defendants in this suit, should pay one hundred and fifty-nine dollars; which payments are ordered and decreed to be made on or before the

first day of January next. And if the conveyances shall not be executed, as above ordered and decreed, the court directs, that John H. Hanna, the clerk of the court, shall, in behalf of the above defendants, execute a deed as commissioner, under the act of Kentucky, conveying to the complainants the interests of the defendants in the premises, as above decreed. It is further ordered and decreed, that the defendant Chiles pay the costs of this suit, except those which have accrued in valuing the improvements, and filing the answers, taking depositions, &c. by the other defendants, which the court decrees shall be paid by them.

[*Order granted—an appeal.*]

Whereupon the defendants prayed an appeal to the Supreme Court of the United States, which is granted upon their entering into bond with Shawhan, their security, in the penalty of two thousand dollars, conditioned according to law.

It is admitted by the complainants and defendants, that the matter in controversy in this cause is worth upwards of two thousand dollars, exclusive of costs.

And afterwards, on a subsequent day of term and year aforesaid (to wit, May term, 1834) the court, upon further consideration, amend the decree entered *upon* herein at the present term, as follows:

[*Amended decree.*]

It is decreed and ordered that the bill of the complainants be, and the same is hereby dismissed, as to so much of the land held and claimed by the defendant, John Evalt, within the bounds of Flournoy's patent, and designated on the connected plat by the letters L. R. P. the said Evalt, and those under whom he claims, having had more than twenty years adverse possession before the commencement of this suit. It is, therefore, ordered and decreed, that the defendant Evalt recover of the complainants his costs herein expended.

And the claim of the complainants is not to be prejudiced by the decree in this cause, as against any of the heirs of Hoy, who are not parties to this suit. Whereupon the complainants prayed an appeal to the Supreme Court of the United States, which is granted upon their entering into bond with Boone Ingles, their security in the penalty of five hundred dollars, conditioned according to law.

[*Amended answer referred to in bill of exceptions.*]

The following is an amended answer, referred to in bill of exceptions, to wit:

William Chiles and others *ads.*
Boone's Heirs.

The defendants in this case, by way of amendment to their original and amended answers, herein state, that since the last term of this court, they have been informed, for the first time, and verily believe, that the original bond from Reuben Searcy to William Hoy, upon which the original bill was filed herein and

by which the land in controversy is claimed by the complainants, was executed by said Searcy to said Hoy, for two hundred acres of land instead of seven hundred; that after the execution and delivery of said bond, the word "seven" was written over, or rather on the word "*two*" in a larger hand writing and different ink from that in which the bond was originally written; that this alteration in said bond, was without the knowledge or consent of the said Searcy, either before or after it was made; that on Friday and Saturday last, the agent of some of the defendants was informed, that a bill had been filed in the Bourbon circuit court by said Searcy, in which the alteration aforesaid, without authority is expressly alleged by Searcy, to which bill Hoy's heirs and others were made defendants; that their agent called and examined the record in said suit, and found the allegation of Searcy to be positive on the subject of the original bond being for *two* hundred acres, and of its alteration to *seven*, without his knowledge or consent; that in consequence of the Bourbon circuit court being in session, the clerk was not able to make out a copy of said record, but as soon as a copy thereof can be procured, it will be made part of this answer; that their said agent was informed by the clerk of the Bourbon circuit court, that the original bond was purloined from the clerk's office of said court, some short time after said bond *was* impeached by Searcy, in said suit; and it is believed that it was taken for the purpose of preventing its unauthorized alteration from being established by inspection of the court, or proof of witnesses. These respondents were induced to believe from the allegations of complainants, that said Searcy was dead; but they have been recently informed, that said Searcy is not dead, that he was alive, and living in Indiana *some time since* he was alleged by complainants to be dead. He is not made a party in this suit by complainants, and the defendants suppose they will be entitled to his testimony, which fully and clearly established said illegal alteration; they also expect to be able to prove both the alteration aforesaid, by inspection of the bond, and the purloining of said bond by Robert Thomas, who was a deputy clerk in said office, at the time that the said bond was purloined; they may also be able to prove the alteration by inspection, by the testimony of William Bowling, whose deposition was taken by complainants to prove the copy of said bond, but at a time when the defendants had no knowledge of the alteration of the bond which they have alleged in this amended answer. These respondents also allege, that since the last term of this court, they have been informed, for the first time, and believe that the assignment of William Hoy to George Boone is *not genuine;* and that they will be able to prove by old Judge French of Montgomery county, that neither the said assignment nor signature were in the hand writing of said William Hoy, that he was well acquainted with the hand writing of Hoy; and had seen and examined said assignment and signature, and is confident they are not in the hand writing of said Hoy. They further state, that they have recently and since the last term of this court, learned and believed that one of the complainants, heirs of Thomas Boone, is an idiot; that he does not appear by committee in this suit. These defendants state, that from the great lapse of

time which has intervened since the transactions which are the subjects of this controversy, the deaths of many of the parties, and the removal from this State of many of the witnesses, that they have had great difficulty in collecting the true state of facts attending the sales and purchase of said land; that the discoveries set up in this amendment were within a few weeks back accidentally made, and for the first time. They consider them important, and therefore set them up, and hope and believe to be enabled to establish them as true; they believe that Boone Ingles, the agent of the complainants and half owner of the claim set up by them, has knowledge or information where said bond is, and that he can procure it; they pray, that they, the complainants, be required to produce it.

DEPEW & SANDERS,
for defendants.

Sworn to in open court May 12th, 1834, by Nicholas Smith.
Attest, JNO. H. HANNA, C. C. C. K. D.

[*Petition of Smith.*]

The following is a petition and exhibit referred to in a former order.

To the honorable, the judges of the circuit court of the United States, for the seventh circuit:

Your petitioner, Nicholas Smith, one of the defendants in the above named suit, begs leave to state, that he has procured an authenticated transcript from the clerk of the Bourbon circuit, of the bill which Reuben Searcy filed in the clerk's office of said court, in 1820, against Hoy's heirs and others, and the proceedings thereon, which are mentioned in the amended answer which he presented to this honorable court, and prayed to file as part of this suit at an early day of *of* the present May term of said court; he now files said transcript with the clerk of this court, and prays that it may be taken as a part of his said answer; he finds, from an examination of said bill, that Reuben Searcy not impeaches the bond which he executed to Hoy on account of the illegal alteration which is mentioned in said amended answer, but also charges that the plat and certificate of survey were *surreptitiously* obtained by Hoy, and *illegally assigned* to him without the knowledge of said Searcy, or any authority from him, and without any consideration whatsoever. Your petitioner states that he had no knowledge of the pendency of said bill in the Bourbon circuit court, nor that such a bill had ever been filed by Searcy, until the time set forth in his amended answer, which was during the present term of this court, nor had he any knowledge of the facts alleged in said bill or any of them, or of the other facts alleged in his said amended answer, until their discovery as stated in his said answer. He prays this honorable court to suspend its decree herein, open the cause, and permit his additional and important defence, as set up in said amended answer, to be made in said suit, and as in duty, &c.

NICHOLAS SMITH.

May term, 1834. Sworn to in open court.
Attest:
JNO, H. HANNA, C. C. C. K. D.

[*Record referred to.*]

The following is the transcript referred to above, which is as follows, to wit:

State of Kentucky:

Reuben Searcy agst. Hoy's heirs. } In chancery.

Pleas at the court house, in Paris, in the county of Bourbon, before the honorable James Clark, judge of the Bourbon circuit court, on the 12th day of November, 1829.

[*Preamble.*]

Be it remembered, that heretofore, to wit, on the 30th day of May, 1820, Reuben Searcy, by George W. Baylor, esq., his attorney, filed in the clerk's office of this honorable court, his certain bill of complaint against Hoy's heirs, in the words and figures following, to wit:

To the honorable the circuit court of Bourbon county in chancery sitting: Your orator, Reuben Searcy, respectfully represents, that he obtained a settlement and pre-emption of fourteen hundred acres of land, which was surveyed and located in the then district of Kentucky, on the waters of Stoner, about Ruddle's station, and now in the county of Bourbon; that after the land was surveyed, a certain William Hoy obtained, in a manner unknown to your orator, the plat and certificate of said land, and without any consideration or authority from your complainant, assigned the said plat and certificate to himself, and carried the land into grant in his, the said Hoy's name, before your orator had any knowledge of said assignment. Your orator states, that he had, at an early day, given to said a bond for two hundred acres of said land, which bond has since been altered from *two* to *seven* hundred acres, and some other alterations; that said bond is now filed in the clerk's office of your honorable court, in a suit wherein a certain William Chiles is complainant, and the said Hoy's heirs, &c., are defendants, which bond in said suit is prayed to be taken and considered as a part of this bill. Your orator charges, that he was an early adventurer to this country, and from his want of the means and knowledge to obtain his just rights, he has been fraudulently kept out of his land for many years. That the said Hoy has departed this life, and left Edward Brown and Sally his wife, late Sally Hoy, Jones Hoy, Lawrence Flournoy and Theodocia his wife, late Theodocia Hoy, John Newland, and Celia his wife, late Celia Hoy, Hugh Brown and Keziah his wife, late Keziah Hoy, Elizabeth South and Fanny Hoy, as his heirs and legal representatives; and Green Clay, who has purchased out the interest of one of the heirs, whom your orator prays may be made a defendant to this bill. That from some cause, unknown to your complainant, although the said Hoy had by fraud obtained the patent in his own name, yet the possession of said land has not been either in said Hoy or his heirs; and that in above named suit, between Chiles and the heirs of said Hoy, there is a contest between, in which Hoy's heirs claim the land by virtue of the patent, but which in fact, and of right your orator ought to have, except the two hundred acres which

his bond was executed for to said Hoy, to the end that justice and right to all parties may be done; he prays that his bill may be taken and considered as a cross bill to the aforesaid suit of Chiles against Hoy's heirs, and that said Chiles and the aforesaid heirs may be made defendants to this bill; that they make full and true answers to all and singular the allegations herein, as if here again repeated in the form of interrogatories; and finally, when the whole matter shall properly be before your honor, he prays that the said *said* Hoy's heirs may be compelled convey by deed, with special warranty, twelve hundred acres of the aforesaid land by such meets and bounds as will be just, and if finally it should appear that it is consistent with the principles of equity to recover the land, he prays such damages to be assessed him, and decreed against said Hoy's heirs, as may be equal to the value of said land; and that such other and further relief may be granted herein as to equity belongs, and his case may require; and your complainant, as in duty bound, will ever pray, &c.

(Signed,) REUBEN SEARCY.

[*Subpœnas in Chancery*]

Upon said bill, the following subpœnas in chancery issued, to wit:

The commonwealth of Kentucky, to the sheriff of Fayette county, greeting:

We command you to summon Elizabeth, Lawrence Flournoy and Theodocia his wife, late Theodocia Hoy, to appear before the judges of our Bourbon circuit court, at the court house in Paris, on the 1st day of our next August term, to answer a bill in chancery, exhibited against them and others, by Reuben Searcy, and this they shall in no wise omit under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of said court, this 30th day of May, 1820, in the 28th year of the commonwealth.

THO. ARNOLD.

[*Subpœna in Chancery.*]

The commonwealth of Kentucky, to the sheriff of Estill county, greeting:

We command you to summon Jones Hoy to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the 1st day of our next August term, to answer a bill in chancery exhibited against him and others, by Reuben Searcy, and this he shall in no wise omit, under the penalty of one hundred pounds, and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 30th day of May, 1820, in the 28th year of the commonwealth.

THO. ARNOLD.

[*Subpœna in Chancery.*]

The commonwealth of Kentucky, to the sheriff of Madison county, greeting:

We command you to summon Edward Brown, and Sally, his wife, late Sally Hoy, Hugh Brown, and Kesiah, his wife, late Kesiah Hoy, and Green Clay, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the 1st day

of our next August term, to answer a bill in chancery exhibited against them and others, by Reuben Searcy, and this they shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 30th day of May, 1820, in the 28th year of the commonwealth.

THO. ARNOLD.

[*Subpœna in Chancery.*]

The commonwealth of Kentucky, to the sheriff of Montgomery county, greeting:

We command you to summon William Chiles to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the 1st day of our next August term, to answer a bill in chancery exhibited against him and others, by Reuben Searcy, and this he shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 30th day of May, 1820, in the 28th year of the commonwealth.

THO. ARNOLD.

Upon said subpoenas there are no endorsements, or sheriff's returns.

[*Order of dismiss.*]

And afterwards, to wit, at a court holden for the circuit aforesaid, at the November term, 1829, the complainants failed to prosecute his suit herein, though solemnly called; it is ordered that this suit be dismissed, and that the defendants recover against said complainant their costs by them about their defence in this behalf expended.

Fee for this transcript, $1,25.

Bourbon circuit, sct.

I, James M. Arnold, clerk of the court for the circuit aforesaid, do hereby certify, that this, together with the foregoing four pages, do contain a full, true, and complete transcript of the record and proceedings had and taken in a certain suit in chancery, lately determined in our said court between the parties therein named, as fully and completely as the same remains of record in my office.

In witness whereof, I have hereunto set my hand this 21st day of May, 1834, in the 42d year of the commonwealth.

J. M. ARNOLD.

[*Com. Report.*]

COMMISSIONER'S REPORT.

Being directed by the court to remodel my report, made in the cause of Boone's heirs *vs.* Chiles, &c., so as to embrace those who are made parties to the cause, and charging them with rents, and crediting them with improvements during the time they occupied portions of the land in controversy.

It will therefore, be seen from report marked (A.) herewith returned, that there is due to Boone's heirs from the several parties, the following amounts, to wit:

From Jacob Smeltzer, - - - - - $ 67 00
From Nicholas Smith, - - - - - 767 00
From Walker R. Baylor, Joseph H. Bledsoe, and Mary Jane, his wife, and Sophia Baylor, and Georgeann Baylor, the said Sophia Walker, and Georgeann, by their guardian, Wm. M. Baylor, - - - 318 50
All of which is submitted,

JOHN H. HANNA,
Commissioner.

REPORT A.

Dr. Jacob Smeltzer.

To rent of 20 acres from 1st January, 1812, to 1st Jan'y, 1828; being 16 years, *a* $1,75	$560	
To rent of 18 acres from 1st Jan'y, 1822, to 1st Jan'y, 1828; 7 years, *a* $2, - - - -	252	
		$812 "

Contra, Cr.

By barn, - - - - -	$100	
By distillery, - - - - -	100	
By 1 stable and 1 cabin, - - -	15	
By 100 apple trees, - - - -	150	
By clearing 38 acres, *a* $10, - - -	380	
Balance due by Smeltzer, - -	67	$812 "

Walker R. Baylor, Joseph H. Bledsoe, and Mary Jane, his wife, George W. Baylor and Sophia Baylor, Dr.

To rent of 37 acres from 1st Jan'y, 1825, to 1st Jan'y, 1831, 7 years, *a* $1,50, - -	$318 50	318 50

Daniel Smith, Dr.

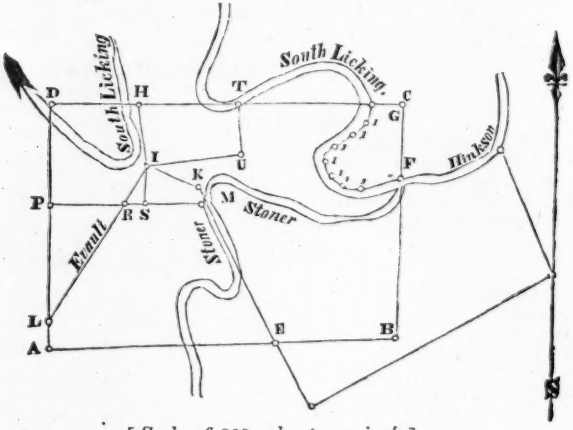
To am't rents, 1st Jan'y, 1825, -	$1710 "	$1710 "

Contra, Cr.

By improvements, - - - -	943	
By balance, - - - -	767	$1710 "

[*Plat 1st and report.*]

The following are exhibits referred to and filed in the suit aforesaid, to wit:



[*Scale of 200 poles to an inch.*]

WILLIAM CHILES, complainant, against WILLIAM HOY'S heirs, &c. defendants. } In chancery.

EXPLANATION TO THE PLAT.

A, B, C, D. William Hoy, assignee of Reuben Searcy's settlement and pre-emption of 1,400 acres, laid down in one inclusive survey, the whole, containing 1,021 acres. E, B, F, I, G, H, I, K, E, is the interference of George Ruddle's settlement and pre-emption of 1,400 acres, with Hoy's claim; that lying north of Stoner nnd Hinkson is a part of the pre-emption; that north of Stoner, and between Stoner and the south fork of Licking, is a part of the settlement. D, H, I, L, is the interference of Flourney's claim of . acres. G, F, I, G, is Joseph L. Stephen's 89 acres, part of Hoy's claim conveyed to said Stephens by said Hoy, by deed, dated the day A, E, M, P, is William Chiles' 700 acres, as decreed, agreeably to his own choice. R, I, K, M, is the residue of the safe land, containing fifty $\frac{1}{4}$ acres. D, T, U, I, S, P. D, is William Chiles' two shares or two eighths *or two eighths* of one eighth, containing 318$\frac{3}{8}$ acres, so that Chiles' entire share will be 1,018$\frac{3}{8}$ acres. I, S, R, is Chiles' proportion of the residue of safe land, containing 14$\frac{1}{4}$ acres, and 11 poles. E, B, F, I, G, T, U, I, S, M, E, is the residue of the tract remaining for Hoy's heirs, containing an equal proportion of safe and unsafe land, the whole containing 813$\frac{3}{8}$.

Bourbon county, October 2d, 1821. Surveyed, pursuant to a decree of the honorable Bourbon circuit court, in the suit aforesaid, 700 acres, part of William Hoy, assignee of Reuben Searcy's settlement and pre-emption, situate and lying in the county of Bourbon, on Stoner's fork, and bounded as follows, to wit: Beginning at (A.) a fallen buckeye, the southwest corner of said settlement and pre-emption, thence with the settlement line, north 88 degrees, east 446 poles, to a forked cherry tree in George Ruddle's old line, crossing Stoner at 304 poles, thence with Ruddle's old line, north 26 west, passing a post corner, to Smelser, at 144 poles; course continued 224 poles to an ash and sugartree on the bank of Stoner corner, to said Ruddle's pre-emption course; continued in all, down the creek 333 poles, to (M) an oak, hickory, haw and hornbeam, on the bank of said creek; thence south 88, west 298 poles, to (P) a stake in Hoy's old line, one pole south, 27 west from a sugartree, and thence with Hoy's line, south 1½, east 303 poles to the beginning. Also surveyed, by virtue of the same decree, William Chiles' two shares or two eighths of one eighth, amounting in all to 318⅝ acres, and bounded as follows, to wit: Beginning at (S,) a stake, in a line of the above survey, thence running north 2, east 90 poles to (I,) a fallen hickory and sugartree, corner to George Ruddle's settlement on a clift of the south fork of Licking, thence north 88, east 140 poles, to (U,) a stake, thence north 1½, west 104 poles, crossing the south fork of Licking, to (T,) a stake in Hoy's old line, on the north bank of Licking, two poles above five marked beaches, thence with Hoy's line, south 88, west 343 poles, crossing South Licking twice, to (D,) a stake Hoy's old corner in a field, thence with his line south 1½, east 188 poles, to a stake in Evalt's line, and thence with a line of said survey, north 88, east 196 poles to the beginning.

(Signed,) Z. EASTIN, S. B. C.

Your surveyor further reports, that he has declined laying down all the interfering claims, because they would only render the plat intricate, without affording information equal to the difficulty. The interference of Ruddle's settlement and pre-emption, and that of Flournoy are laid down; both those claims have an actual possession of more than 20 years within Hoy's claim. James Trabue's claim of 357 acres, interferes at the south west corner of the settlement and pre-emption, but it is believed there is no adverse possession within Hoy's lines. James Trabue's 800 acres, also interferes, but there is no adverse possession. The claim of Thomas Evalt, for 2,000 acres, also interferes with the last interest allotted to Chiles, and has an adverse possession of more than 20 years. There are, also, two surveys of 60 acres each, made 24th February, 1812, in the name of Hinkson's heirs both lying on the part last mentioned, allotted to complainant Chiles, on the north of and including the south fork of Licking, in the northwest angle of Hoy's pre-emption. In addition to these, James Ruddle's pre-emption of 400 acres, owned by Joseph L. Stephens, interferes with Hoy in his northeast angle, and on the northeast angle, on the north side of the south fork of Licking. This interference is represented on the plat, by Ste-

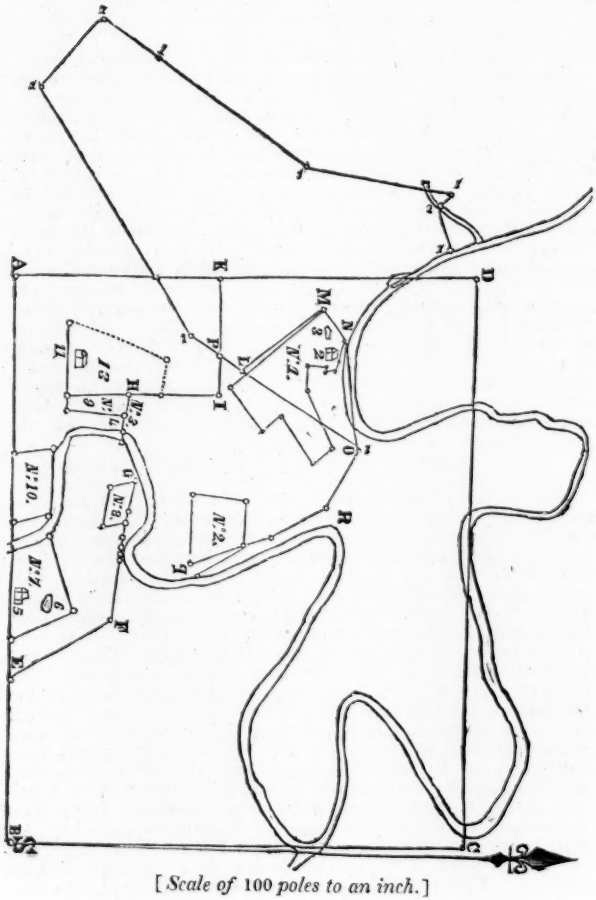
phens' purchase of 89 acres from Hoy. No other interference is known.

Respectfully submitted by your commissioner and surveyor,

(Signed,) Z. EASTIN, S. B. C.

A copy. Attest:

THO. ARNOLD, C. B. C. C.



[*Scale of* 100 *poles to an inch.*]

[*Plan and report.*]

BOONE'S HEIRS, *complainants*, against WILLIAM CHILES, &c., *defendants*. } In chancery.

Explanation to the Plat.

A B C D.—William Hoy's settlement and pre-emption of 1,400 acres, inclusive,—contains 1,993¼ acres and 34 poles.

1. William Flournoy's, 492 acres.

A E F G H I K A.—Peter Smelser, 400 acres. Contains

L M N O.—Nicholas Smith's 50 acres, a part of William Flournoy's 492 acres.

2. Nicholas Smith's house, (Smith now dead).

3. Nicholas Smith's grave, (also his wife's).

Those lots painted yellow represent Nicholas Smith's cleared lands.

No. 1 contains 68¾ acres and 14 poles. } This land cleared
No. 2 contains 29¼ acres. } and fenced, as is usual
No. 3 contains 4 acres. } in Kentucky.

O P I H. 4, and down Stoner to Q R O. Nicholas Smith's 200 acres contains 260 acres, 3 roods, 35 poles.

5. Peter Smeltser's house, (Smelser long since dead).

6. The graves of Peter Smelser and wife.

No. 7. (in green). Peter Smelser's improvement, and contains 41½ acres and 6 poles.

No. 8, (in green) is cleare dand fenced, and contains 10¾ acres and 3 poles.

No. 9, (in green) do. do. 5 acres and 20½ poles.

No. 10 is also cleared and fenced land, now in cultivation, and contains 17¾ acres and 25 poles.

11. Jacob Smelser's house. 13 is his improvement, in red, and contains 28 acres: this land is now in the possession of Daniel Showham, under Jacob Smelser, one of the heirs of Peter Smelser, deceased.

Bourbon county, sct., April 16th, 17th, and 18—29.

Surveyed pursuant to an order of the honorable United States seventh circuit court for the district of Kentucky, in the suit *of* aforesaid, William Hoy's settlement and pre-emption of 1,400 acres, and is bounded as follows, to wit: Beginning at (A) a buckeye near a branch corner to Samuel McMellon's; the other timber called for is missing: then with his line N 88¾, east 636 poles, crossing Stoner to B, two sugar trees: then north 1¼° west 501½ poles, crossing Stoner and the south fork of Licking, to (C) a black walnut; the honey-locust called for is missing: then S 88¾ west 636 poles, crossing the south fork of Licking four times, to D, a stake in a field; (in running this line, at 515 poles *feel* in with and pursued a plain old marked line, where there was timber); the three cherry trees are missing; the line passes 100 poles through cleared land, before I reached the corner: then S 1¼° east (pursuing a plain, well marked ancient line after crossing the south fork of Licking) 501½ poles to the beginning, containing nineteen hundred ninety-three acres one quarter, and thirty-four poles, making a surplus of 593¼ acres and 34 poles.

Also surveyed Peter Smelser's 400 acres, and is bounded as follows, to wit: Beginning at A, a buckeye near a branch corner to Samuel McMellon's: then with his line N 88¾ east 440 poles, crossing Stoner and passing through Peter Smelser's house to E, a forked cherry tree in George Ruddle's pre-emption line: then with his line N 27¼ west 1392 poles to F, a post: then west 64 poles to an elm, lynn ash, and sugar tree, on the bank of Stoner: then up Stoner, as it meanders N 66½ W. 12 poles, N 55½ W. 18 poles, N 74½ W. 9 poles, N. 86½° W. 6 poles, S 75½ W. 30 poles: then S 68 west 50 poles to an ash stump and dogwood, nearly opposite McMellon's spring: then west, crossing Stoner, 53 poles to H, a stone now set where formerly stood a hickory, corner to Nicholas Smith: then with his line north 1,028 poles to I, two box-elders: then S 89½° west 145 poles to K, a buckeye stump; set a stone in Hoy's west boundary line, and then with said line south 1¼ east 227 poles to the beginning, containing 419 acres. The lines and corners of this survey are all well and plainly marked, and appear to be verry ancient.

Also surveyed Nicholas Smith's 50 acres, a part of William Flournoy's 492 acres, also covered by the pre-emption of William Hoy, and is bounded as follows, to wit: Beginning at (10) to stone where formerly stood a hickory, on a high clift of the south fork of Licking corner, to George Ruddle's settlement, also corner to William Flournoy's 492 acres, thence with his line S 31° west 1494 poles to L, a honey-locust corner to James Trabue: then with his line N 40° 37 west 112 poles to M, an ash in Hinkson's old line, corner to John Evalt: then with said line N 60 east 33 poles to N, a large sugar tree on a clift of the south fork of Licking: and then N 78° east 126 poles to the beginning, containing 54½ acres. This survey includes the residence of Nicholas Smith, deceased, and the burying ground; the improvements is represented to be about 36 years old. Also surveyed the remaining land in Hoy's claims, said to be included in the 260 acres of Nicholas Smith, and is bounded as follows, to wit: Beginning at (O) a stone on a high clift of the south fork of Licking, corner to George Ruddle: then with his line S 63½° east 74 poles to a hickory, corner to said Ruddle: then with his line S 27¼ east 169 poles to Q, an elm on the bank of Stoner: then up Stoner as it meanders S 2° east 51 poles, S 33° W. 10 poles, S 75 W. 10 poles, N 57° W. 40 poles, S 83° W. 23 poles, S 67° W. 81 poles, to McMellon's spring: then S 52 W. 92 1–10 poles to a sycamore stump, at 4, in Smelser's line: then with said line W 32½ poles to N, a stone where formerly stood a hickory, corner to Smelser's 400 acres: then north 1,028 poles to I. two box-elders, corner to Smelser's 400 acres: then S 89½ W. 57 poles to a stake at the intersection of said line with the eastern boundary line of William Flournoy's 492 acres; and then with said line N 31° E. 189 poles to the beginning, containing 260¾ acres and 35 poles.

Z. EASTIN, S. B. C.

[*Record. Wm. Chiles and others* vs. *Wm. Hoy, &c. from Bourbon circuit Court.*]

KENTUCKY, *sct.*

Pleas at the court house in Paris, in the county of Bourbon, before the honorable judge of our Bourbon circuit court, at the November term, one thousand and eight hundred and twenty-one:

Be it remembered, that heretofore, to wit, on the twenty-sixth day of January, 1818, William Chiles, Hezekiah Boone, George Boone, and Thomas Boone, by their counsel, lodged in the clerk's office of this honorable court, their certain bill of complaint against the heirs of William Hoy, deceased, and others, in the words and figures following, to wit:

To the honorable judge of the Bourbon circuit court in chancery sitting: Your orators, William Chiles, Hezekiah Boone, George Boone, and Thomas Boone, humbly represent, that a certain Reuben Searcy obtained from the court of commissioners appointed under the land law of Virginia, a certificate for a settlement and pre-emption in the then district of Kentucky, and also made his entry of the certificate with the surveyor, and having obtained a pre-emption warrant, entered it with the surveyor. That the above business was done on behalf and for said Reuben by a certain John Martin, who was entitled to half the tract for his services; and said Reuben sold for a valuable consideration to a certain William Hoy the one half of said tract of seven hundred acres, and gave his bond, allowing Hoy first choice thereof, dated the 24th September, 1781, which bond is hereto annexed as part of this bill. That although said Searcy might not, owing to Martin's interest, have been able to give choice of the tract, yet the said Hoy afterwards purchased Martin's interest, and thereby became the owner of the whole in equity. That after the surveys of both settlement and pre-emption was executed, said Hoy, instead of allowing the patent to issue to Searcy, and taking a conveyance from him, received from said Searcy and assignment of the plats, and certificate of survey in discharge of Martin's contract and his own, and the patent issued to said Hoy, dated the 10th day of July, 1785, as by reference to the certificate, entries, plat, and certificate of survey, and patent or attested copies thereof will appear; but your orators charge that although said Hoy took said assignment in discharge of said contract of Searcy to him, yet your orators suppose that he concealed this circumstance from Searcy of having assigned his bond before that period, for on the 15th day of December, 1781, he, for a valuable consideration paid, assigned said bond by a special assignment, making himself responsible for the said bond to your orator George Boone, as by reference to said assignment on said bond will appear.

That your orator, George, on the 30th day of April, 1785, for a valuable consideration, sold and assigned the said bond to your orator, Thomas Boone, as by reference to assignment will appear; that on the 30th of September, 1802, your orator, Thomas, sold said bond to your orator, Hezekiah Boone, as by reference to an article of agreement of that date will appear, that on the 30th of October, 1817, your orator, Hezekiah, contracted for and parted with his interest to your orator, William Chiles, by a contract

between them; so that he is entitled to a conveyance of all the interest stipulated for in said bond and assignments, and with him your other orators unite for the purpose of coercing a title. That the said Hoy, during his lifetime, never made any conveyance in discharge of his contract as he was bound. That said Hoy departed this life having previously made his last will and testament, now duly recorded in the Madison county court, whereby he devised his estate to Jones Hoy, Rowland Hoy, William Hoy, Elizabeth South, formerly wife, now widow of John South, deceased, Parthenia Hoy, now the wife of John Sappington, Kezia Hoy, now the wife of Hugh Brown, Theodocia Hoy, now the wife of Lawrence Flournoy, Celia Hoy, now the wife of John Newland, and Fanny Hoy, the last of whom is an idiot, and the said Hugh Brown is her committee by regular appointment of the Madison circuit court. That the said Rowland Hoy departed this life childless and intestate, after he was of age, by which his part went and descended to his mother, brothers, and sisters; that his mother, Sally Hoy, afterwards intermarried with and is now the wife of Edward Brown. Your orators charge that your orator, William, has made choice of the part which he will take in satisfaction of the contract, in the following manner, commencing at the southwest corner of the whole tract on the inclusive survey of the settlement and pre-emption, thence east with the ancient line till it intersects a line of George Ruddell's pre-emption which is an elder grant, and holds the possession of the land, thence with line to Stoner, and with Stoner to the settlement corner, and with his settlement line so far that a line parallel to the first named chosen line shall include the quantity demanded or contracted for by said bond. That he has notified the heirs of said choice, and the said William Hoy, and John Sappington, and Parthenia, his wife, have conveyed their interest to the said *to the said* William Chiles, pursuant to the bond of their ancestor, but the rest of the heirs and devisees have refused to convey according to said contract of the said William. Forasmuch, therefore, as your orators are remediless as to a specific execution at common law, they apply to a court of chancery for that purpose, and to increase the difficulty the said John Newland, and Celia, his wife, have conveyed their interest in said tract with others to a certain Green Clay, who your orators charge had full knowledge of your orator's claim, and as they are informed and believe, executed a contract with said Newland and wife when he received their conveyance, binding himself to make good all the contracts of their ancestor, but yet the said Green Clay refuses to convey to your orator, William Chiles.

They, therefore, pray that said Edward Brown and Sally, Jones Hoy, Lawrence Flournoy, and Theodocia his wife, John Newland and Celia his wife, Elizabeth South, Fanny Hoy, by Hugh Brown her committee, and Green Clay, may all be made defendants to this bill, and that, on their oaths, they may be compelled to answer the allegations thereof; and that, on a final hearing of this cause, said defendants may be decreed to convey to your orator, William, the *William the* whole of their interest in the land so chosen, by proper deed, complying with their ancestor's contract; or if no conveyance can be had, that a

compensation in damages may be decreed to your orator as the law may allow, and they pray for such other and further relief as to equity belongs; and your orators, &c.

The exhibits made in the foregoing bill are in the words and figures following, to wit: Know all men by these presents, that I, Reuben Searcy, of the county of Fayette, am held and firmly bound unto William Hoy, of the county of Lincoln, and State of Virginia, in the penal sum of fifty thousand pounds, current money of Virginia, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, unto the said William Hoy, he, his heirs, or assigns, this 24th day of September, 1781. The condition of the above is such, that if the above bound Reuben Searcy shall well and truly make, or cause to be made, as soon as deeds is made to lands in this country in general, a good and sufficient deed for seven hundred acres of first rate land, laying in Fayette county, on Licking creek, between John Martin's station and Ruddle's station; it being part of a settlement and pre-emption that John Martin cleared out on the halves for said Reuben Searcy; and the said Hoy takes his first choice of the land, then the above obligation to be void; otherwise to remain and be in full force and virtue.

"Signed" REUBEN SEARCY. [SEAL]

Signed, sealed, and delivered, in presence of us,

JESSE CARTWRIGHT,
CALEB CALLOWAY.

A copy: Att.

Signed,

JOHN S. BOWLING, D. C. B. C.

The following are the endorsements on the foregoing bond, to wit:

I, William Hoy, assign over the within bond unto George Boone, his heirs or assigns; and said Hoy obliges himself, his heirs, executors, and administrators, as *shourely* to within bond; and if the within lands cannot be obtained by reason of a prior claim, then, and in that case, seven hundred acres, equal in quality and convenience, shall discharge the within bond.

Witness my hand this 15th day of December, 1781.

Signed, WILLIAM HOY.

Teste:
JOHN TURNER,
NATHL. HART.

I do hereby assign over all my right, title, and claim, of the within bond unto Thomas Boone, heirs, or assigns, without recourse to the same; that is to say, that I, the said George Boone, am no ways obligated if the said William Hoy, or his heirs, sufficient to make good the within bond; but if the said William Hoy or his heirs should not be good, then I, George

Boone, do bind myself, my heirs, to make good the same unto the said Thomas Boone, or his heirs or assigns.

Witness my hand this 30th day of April, 1783.

"Signed," GEORGE BOONE.

Teste:
WILLIAM HUNTER.

Attest: Signed,
JNO. S. BOWLING, D. C. B. C. C.

Reuben Searcy this day claimed a settlement and pre-emption to a tract of land in the district of Kentucky, lying on Stoner's fork of Licking, at Martin's cabin, by settling, in the year 1777, and residing ever since. Satisfactory proof being made to the court, they are of opinion, that the said Searcy has a right to a settlement of four hundred acres, including the above location, of the pre-emption of one hundred acres adjoining; certificate not to issue until the further order of the court. Certificate issued for 1,400 acres by order of court, at Bryant's.

Present, William Fleming, Stephen Trigg, and Edmund Lyne, Genl. 27th December, 1779.

A copy. Teste:

JNO. M. FOSTER, R. L. O.
by Cuth. S. Anderson, D. R.

Patrick Henry, Esq., governor of the commonwealth of Virginia.

To all to whom these presents shall come greeting:

Know ye that, by virtue of a certificate in right of settlement, given by the commissioners for adjusting the titles to unpatented lands in the district of Kentucky, and in consideration of the ancient composition of two pounds sterling, paid by William Hoy into the treasury of the commonwealth, there is granted by the said commonwealth unto the said William Hoy, assignee of Reuben Searcy, a certain tract or parcel of land containing four hundred acres by survey, bearing date the 22d day of October, 1783, lying and being in the county of Fayette, on Stoner fork of Licking, and bounded as followeth, to wit: Beginning at a buckeye and ash corner to Samuel McMillin's settlement; and running from thence E. 320 poles, with McMillin's line, to a stake; thence N. 200 poles, to a stake; thence W. 320 poles, to a stake; thence S. 20 poles, to the beginning, with its appurtenances: to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Hoy and his heirs forever.

In witness whereof, the said Patrick Henry, esq., governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed at Richmond, on the tenth day of July, in the year of our Lord one thousand seven hundred and eighty-five, and of the commonwealth the tenth.

Signed, PATRICK HENRY.

A copy. Teste:

JNO. M. FOSTER, R. L. O.
by Austin P. Cox, D. Reg. L. O.

Articles of agreement, made and agreed upon this 30th day of November, 1802, witnesseth: That Thomas Boone, of the State of Pennsylvania, hath bargained and sold unto his uncle, Hezekiah Boone, of the State of Tennessee, in Clarke county, a certain tract of land containing seven hundred acres, more or less, lying on the waters of Licking, in the State of Kentucky, being one half *par* of a settlement and pre-emption right of Reuben Searcy's claim, which the said Thomas Boone purchased of Squire Boone; but Searcy's obligation was transferred to the said Thomas Boone by George Boone bound, is surety for the title for the consideration of seven hundred pounds lawful money of Pennsylvania, to be paid unto the said Thomas Boone or his heirs within four years from the date hereof, at the choice of the said Hezekiah Boone or his heirs, at any time within the said term of four years, to take the land or not, as may suit them best; and the said Thomas Boone binds himself, his heirs, to make a good and lawful title to the said Hezekiah Boone, or his heirs, at any time within the four years aforesaid, at receiving the consideration money in full, the said Hezekiah Boone covenanted and agrees to give to the said Thomas Boone, in part, or in full, all his land his brother, Josiah Boone's, share in lands belonging to their father, George Boone, deceased, in the State of Pennsylvania, the said Thomas Boone is to receive their shares of the moneys arising from the lands sold, or to be sold, and to keep a regular account of all the moneys that is comining to the said Josiah and Hezekiah Boone, arising from the said land, and to account to them for the same, as payment, or part thereof, for the above mentioned seven hundred pounds, if they shall conclude to take the land aforesaid.

In witness whereof, we bind ourselves, our heirs, the day and date above mentioned.

Signed,

THOMAS BOONE. [SEAL.]
HEZEKIAH BOONE. [SEAL.]

Witness present:
MORDECAI LINCOLN,
THOMAS LINCOLN.

A copy. Teste:

JNO. S. BOWLING, D. C.

The amendment of William Chiles and Hezekiah Boone, Thomas Boone, and George Boone, to their bill of complaint exhibited herein, against the heirs and devisees of William Hoy, deceased. Your orators further state, that said William Hoy died about the year 1790; that previous to his death he sold and conveyed to a certain Joseph L. Stephens, about 1800, 90 of said land out of said settlement and pre-emption, which interfered with said Stephens, who had purchased and took possession of that much under a claim entered in the name of John Ruddell, and patented to James Ruddell, his heirs at law. That in the year 1792, the whole of said 1,400 acres, except that part mentioned in their original bill, as held in the adverse possession of George Ruddle's settlement and pre-emption, and that part sold to the aforesaid Stephens was unsettled & unoccupied, and left for

the purpose of satisfying the aforesaid bond and assignment of said Hoy, deceased. That in the year 1792, the said John South, son-in-law of said Hoy, procured from your orator George, said bond, he, the said George, then holding it as the friend of your orator Thomas, it being then his property. That the said John South represented to your orator George, that he would investigate said land, and obtain it for him. And said South executed and delivered to your orator George for your orator Thomas, his bond, binding him, the said South, to convey to your orator Thomas, the aforesaid 700 acres, provided he got a title from the devisees of said William Hoy, which title he was to procure. That said South, after he got possession of the aforesaid bond from your orator George, never took one step, according to his contract, to procure the title, but, on the contrary, come and sold the land, executed conveyance bonds for the same, claiming under your orator's bond, and parcelled out the same to Nicholas Smith, Peter Smelser, and others, who took possession of said land, and have continued, they or their representatives, or assignees, to reside thereon ever since; that the possession of said lands, so far as it is held under Hoy's patent, is, and has been, held under your orator's aforesaid contract on William Hoy, and during the whole time, from the year 1792, until your orator, William Chiles, purchased said land, and became interested, as stated in the amended bill, in the year 1817, the said defendants acquiesced in the possession thereof by South and his vendees, and never set up claim to the land, or attempted to disturb the possession thereof; but after your orator, William Chiles, had purchased and applied to the representatives of John South for a title to said 700 acres, according to said John South's bond, they knowing that their father had sold the land, and had made no effort to obtain the title, surrendered to your orator William, the aforesaid bond of Searcy to Hoy, and took in their father's bond for the conveyance thereof, which rescision your William Chiles excepted; that the persons settled on said land, under South, finding your orators were entitled to the land, they *they* surrendered to your orator William, and gave up their contracts on South, and agreed to purchase, and took possession under your orator William, and now so hold it, and yet the said defendants refuse to convey it.

Your orator William when he received the conveyance, stated in his original bill from Sappington and wife, and William Hoy, also purchased of them the residue of their interest in said tract, for a valuable consideration, so that your orators have not only received satisfaction from them as to their interest in the 700 acres, which they were bound to convey under their father's contract, but have also become entitled to their interest in the residue of the tract, which they pray may also be divided and laid off to your orator William in good form, and adjoining the 700 acres chosen in the original bill; and further pray as in their original bill is prayed.

Your orators further state, that the said Hugh Brown, the defendant, and the rest of Hoy's heirs, have procured from the clerk a writ of possession on a judgment in ejectment obtained by your orators against other tenants on the land, in their name,

to whom your orators William, had sold, and is now about to take possession. They, therefore, pray, that an injunction be granted them, restraining the said Hoy's heirs from taking the possession, or executing any writ till the further order of this court.

[*Supplemental bill.*]

The supplemental of William Chiles to a bill in chancery exhibited against the heirs of William Hoy, deceased, and others, in the Bourbon circuit court: He states, and expressly charges, that pursuant to the order of this court, he took out the original bond from Searcy to Hoy, with Hoy's assignment on the back, and took the depositions now filed, proving it to be genuine, the clerk first keeping a copy. That after said depositions were taken and enclosed to the clerk of this court, together with said bond, which had been exhibited to said witnesses, they, together with the said original bond, was filed in the office of the clerk of the court, during the last term of this honorable court, as the endorsements on the depositions will show. That on examining the papers at this term, shortly after they had been examined by Hugh Brown, one of the defendants, he discovers that the said original bond is gone, and lost out of the clerk's office, and papers of this suit, and he knows not how it has gone, or who has taken it, nor can he find it. Whereby he is compelled to rely on the attested copy filed and retained by the clerk, when the original was first taken; and he refers to said copy, with its assignments, as part of this bill, and prays as before.

Bourbon county court, sct. May term, 1820. Sworn to in open court. Att:

(Signed,) THO. ARNOLD, Clk.

Upon which bills process of subpoena being awarded, and the defendants therewith duly served, they appeared and answered in the words and figures following, to wit:

The joint and separate answer of Edward Brown and Sally his wife, Jones Hoy, Lawrence Flournoy and Theodocia his wife, John Newland and Celia his wife, Hugh Brown and Keziah his wife, Elizabeth South, Fanny Hoy, by Hugh Brown, her committee, to a bill in chancery exhibited against them in the Bourbon circuit court, by William Chiles, Hezekiah Boone, Thomas Boone and George Boone, complainants. These defendants, reserving to themselves all exceptions to the said bill for answer to so much thereof as they are advised it is material for them to answer unto, they answer and say that, they admit it may be true, that the said Reuben Searcy in the bill mentioned, did claim from the court of commissioners such certificate, and make such entry and survey thereon, as is stated in the said bill, and that the certificate of such survey having been for a valuable consideration paid him by their said ancestor, William Hoy, assigned to him by the said Searcy, the patent, a certified copy of which is annexed to the complainants' bill, was duly issued to him, the said William Hoy. These defendants further answering, say, that they knew nothing of the bond alleged to have been executed by the said Reuben Searcy to their said ancestor, or any of the various assignments alleged to have been made thereon, or of the execution of the contract alleged to have been entered into between

the said Thomas and Hezekiah Boone, or that between them, the said Thomas and Hezekiah Boones, and the complainant Chiles, of the due and legal execution of all which instruments, so far as they may have any influence on the rights and interests of these defendants, they require complete and satisfactory proof. These defendants are equally ignorant of the sales and transfers alleged to have been made by the said John South in his life time, of part of the said 1,400 acres of land, or in what manner the heirs of him, the said South, became divested of their interest in, and claim to the said bond, which the complainants themselves allege he was once entitled to, and of which he long held the possession, as it could seem by virtue of an assignment, purporting to be for a valuable consideration, and these defendants call upon the complainants to manifest, by satisfactory evidence by which, if any legal or competent authority, they obtained possession of the said bond, and by whom, or under whose directions or authority the said assignment to the said John South was erased from the back of the said bond. These defendants further answering, state, that it is manifest from the face of the said bond, that the word "seven," one of much importance to the sense of said bond, has been written over some other word since the original draught of the bond in a larger hand writing than that in which bond was first couched; that one entire line is interlined between two others in the original draft of the bond, which interlineation, as well as the charge first alluded to, essentially alter the sense and obligatory force of the said bond; therefore, these defendants demand of the complainants satisfactory evidence that those alterations in the said instrument, if originally genuine, were made by proper authority prior to its execution, or of its assignment by their said ancestor, if such assignment ever was made, as it appears from a comparison of the said bond, with that executed to him, the said Martin, as alluded to in the complainants' bill, that in that part of the condition of the first named bond which is thus interlined, there is a total incompatibility between it and the bond to Martin, as suggested in the complainants' amended bill. These defendants call upon the complainants to account to this court in some rational and legal manner for the great, unusual and unreasonable length of time which has been suffered to elapse since the execution of the said bond, if it is a genuine one, since the date of the patent, and the supposed assignment thereof, by their said ancestor, one of the consequences of which unreasonable delay as these defendants allege is an entire change in the circumstances and situation of the country from a wilderness exposed to savage incursions and hostilities, to one of high cultivation, and of perfect security and consequential increase in the value of the said land from ten to twenty fold; and these defendants are advised further to insist and rely on the length of time which has elapsed since the sale of the said supposed assignment of their said ancestor, in which they are endeavored to be charged herein as a bar to the relief prayed for in and by the complainants' said bill. These defendants do not admit the complainants are entitled to sue together as co-complainants in the present suit, or to unite in any other manner in a suit against these defendants. They deny all fraud and confederacy with which

they stand charged without that, that, &c., and pray to be hence dismissed with their costs herein expended.

Madison county, sct.

This day personally appeared before James Degannett, a justice of the peace for the county aforesaid, Edward Brown and Sally his wife, Hugh Brown and Keziah his wife, and Hugh Brown as committee for Fanny Hoy, and made oath, as the law directs, that the within answer, so far as came within our knowledge, is true; and that part that is derived from the information of others, believe to be true. Given under my hand, this 20th day of May, 1819.

(Signed) JAMES DEGANNETT.

The separate answer of Lawrence Flournoy, by William B. Summers and Jones Hoy, his acting committee by regular appointment of the Fayette circuit court, and Theodocia his wife, late Theodocia Hoy, and Jones Hoy for himself, to a bill in chancery, exhibited against them and others in the Bourbon circuit court, by William Chiles, Hezekiah Boone, Thomas Boone and George Boone, complainants. These defendants, reserving to themselves all exceptions to the said bill, for answer to so much thereof, as they are advised it is material for them to answer; they answer, and say, they admit it be true, the said Reuben Searcy in the bill mentioned, did obtain from the court of commissioners such certificate, and make such entry and survey as is stated in said bill; and that the certificate of such survey having been for a valuable consideration paid him by their ancestor William Hoy, was assigned to him by the said Searcy, the patent, a certified copy of which is annexed in the complainants' bill, was duly issued to him, the said William Hoy; these defendants further answering, say, they know nothing of the bond alleged to have been executed by the said Reuben Searcy, to their said ancestor, or any of the various assignments alleged to have been made thereon, or of the execution of the contract alleged to have been entered into between the said Hezekiah and Thomas Boones; and the complainant Chiles of the due and legal executions of all instruments, assignments and contracts, so far as they may have any influence on the rights and interests of those *of those* defendants, they require complete and satisfactory proof. These defendants are equally ignorant of the sales and transfers alleged to have been made by the said John South, in his life time, of part of the said 1,400 acres of land, or in what manner the heirs of him, the said South, become divested of their interest and claim of said bond, which the complainants themselves allege he was once entitled to, and of which he long held the possession, as it would seem, by virtue of an assignment purporting to be for a valuable consideration; and these defendants call upon the complainants to manifest, by satisfactory evidence, by which, if any legal or competent authority, they derived the said bond and by whom or under whose direction or authority the said assignment to the said John South, was erased from the back of the said bond.

These defendants, further answering, state that it is manifest, from the face of said bond, that the word "seven," one of much importance to the sense of said bond, has been written over some

other word, since the original draught of the said bond, in a larger hand writing than that in which the bond was first couched, and that an entire line is interlined between two others in the original draught of the bond, which interlineation, as well as the change first alluded to, essentially alters the sense and obligatory force of said bond; wherefore these defendants demand of the complainants satisfactory evidence of the alterations in said bond, if originally genuine, and if made by proper authority, prior to the execution, or of its assignment by their said ancestor, if such assignment was ever made by their said ancestor, William Hoy, as it appears from a comparison of the said bond with that executed to him, the said Martin, as alluded to in the complainant's bill, that in the condition of the first named bond, where it is interlined, there is a total incompatability between it and the bond to Martin, as suggested in the amended bill: these defendants call on the complainants to discover to this court, in some rational and legal manner, for the unusual and unreasonable length of time which has been supposed to elapse since the execution of the bond and the supposed assignment thereof by their said ancestor, one of the consequences of which unwarrantable delay, as these defendants allege, is an entire change in the circumstances and situation of the country, from a wilderness exposed to savage excursions and hostilities, to one of cultivation and perfect security, and a consequent increase in the value of the said land from ten to twenty fold; and these defendants are advised further to insist and rely on the length of time which has elapsed since the sale of the supposed assignment of their ancestor, on which they are supposed to be charged herein as a bar to the relief prayed for in and by the complainants' said bill. These defendants do not admit the complainants are entitled sue together as complainants in the present suit, or to unite in other manner; and further, they deny all fraud and confederacy which they stand charged with, &c., and they pray to be hence dismissed, with their costs herein expended.

Jessamine county, sct.

This day came William B. Summers and Jones Hoy, the acting committee of Lawrence Flournoy, by regular appointment of the Fayette circuit court, and Theodocia Flournoy, the wife of said Lawrence, and Jones Hoy for himself, and made oath that the foregoing answer is true from their own knowledge, and information of others.

Given under my hand the first day of June, 1819.

Signed, JAMES MARTIN, J. P.

An amendment to the answer of Hugh Brown, and Sally, his wife, and the other representatives of William Hoy, deceased, to a bill in chancery filed against them in the Bourbon circuit court, by William Chiles and others, complainants:

These defendants state that since the filing of the original bill, and during the pendency of this suit, the original bond purporting to have been executed by Reuben Searcy to William Hoy, has been withdrawn by the complainants or some other person, or has been mislaid by some means in the clerk's office to these defendants entirely un-

known; that your respondents have waited for a considerable period since the disappearance of the said bond, in the hope that it would be returned if withdrawn, or found if mislaid by the clerk in his office, but as he is informed upon recent inquiry without success, altho' the main or principal points in the defence of your respondents rests upon an inspection and examination of the bond, and upon proofs made by witnesses having the advantage of an inspection of this paper. These defendants further state, that if upon a trial of this cause on the merits, the complainants shall be deemed entitled to a decree for any part of the said settlement and pre-emption in the bill mentioned, that of an equitable division of the same be made, having due regard to all the interfering and conflicting claims therewith, of which these defendants aver there are several; in virtue whereof a large part thereof is held in adverse possession by others, which claims, these defendants apprehend, are superior to that of the said Searcy as well as to the quality of the local advantages attached to the land, or in case any land should be decreed the complainants on which improvements have been made under purchases from John South, that compensation be made for the value of all such lasting improvements as shall be found on the premises so decreed, and the defendants, according to the act of assembly, call on the complainants to answer and say, whether they know in what manner or by whom the said bond was withdrawn from the papers in the suit, and where the same may be found.

The answer of Hugh Brown and others, representatives of William Hoy, deceased, to the supplemental bill filed against them by William Chiles in the Bourbon circuit:

The defendants admit that a bond purporting to have been executed by the said Reuben Searcy, to which reference was made by the complainants in their original bill, was filed in the clerk's office of this court; that the same was withdrawn by the complainants, and that the same might have been returned with the depositions alluded to in the said bill, but of its subsequent loss by the clerk or any other person, he is entirely ignorant, protesting as he most solemnly does, that he has no knowledge of its loss or withdrawal, or any thing in relation thereto; that the defendants in the said suit can have no interest in its loss or destruction, but a most interest in its recovery if lost, of which he hopes the complainants will be compelled to produce satisfactory proof, as the defence of these defendants rests mainly on the production of the said original bond, on establishing to the satisfaction of this court that the same has been fraudulently altered in more than one important particular since its execution, and especially by the change of the quantity of land in said bond, expressed from 200 to 700 acres. These defendants state, that said complainants are mistaken in stating that Smelser has held the land under George Boone from 1792, for in fact they say said Smelser purchased said land from John South, who sold to him in 1791, as one of the heirs of William Hoy, so that he held under Hoy's claim (all which they say will more fully appear by a copy of said bond from South to Smelser, which is made a part of this answer and marked A.; and they call upon said complain-

ants to state whether they do not know of said bond, for they do not know where the original bond is themselves.

They require proof of any consideration having been paid by George Boone to William Hoy for said supposed assignment on Searcy's bond.

KENTUCKY, } sct.
Madison county, }

This day personally appeared before the subscriber, a justice of the peace for the county aforesaid, Hugh Brown, and made oath that the facts stated in the foregoing answer, so far as stated from his own knowledge are true, and so far as stated from information of others, he believes them true.

Given under my hand, November 25th, 1820.

Signed, DANL. BURK.

An amendment to the answer of Hoy's heirs to the bill of William Chiles and others, in the Bourbon circuit court:

These defendants further answering, state that the settlement and pre-emption of Reuben Searcy in the bill mentioned, is interfered with to a great extent by other adverse claims, and especially by the settlement and pre-emption of George Ruddell, in virtue of which adverse claims a considerable portion of the said settlement and pre-emption is and has been in the adverse possession of others for upwards of thirty years as they have informed, from which adverse possession, as well as from the superiority of those claims, or some of them, your respondents apprehend that not more than somewhere about 800 acres will be secured and held under the claims of said Searcy, in which event these defendants contend that they ought not exclusively to bear the loss, but that the complainants, if entitled to recover any land in the present case, that they should receive a portion of that which is in danger of being lost as well as of the safe land.

Bourbon circuit court, sct. August term, 1821. Sworn to in open court.

Attest, (Signed) THO. ARNOLD, *Clerk.*

The separate answer of Green Clay, to a bill in chancery exhibited against him and others, in the Bourbon circuit court, by William Chiles and others:

This defendant reserving to himself all manner of exceptions to said bill for answer thereto, or so much thereof as he is advised it is material to answer; he answereth and saith, it may be true the said Reuben Searcy, in the bill mentioned, did obtain from the court of commissioners such certificate, and make such entry and survey as is stated in said bill, and that the certificate of such survey having been for a valuable consideration paid him, by Wm. Hoy, was assigned to him by the said Searcy. The patent, a certified copy of which is annexed to the complainants' bill, was duly issued to him, the said Wm. Hoy. This defendant further answering, says, he knows nothing of the bond alleged to have been executed by the said Reuben Searcy, to Wm. Hoy, or of any of the various assignments alleged, to have been made thereon, or of the execution

of the contract alleged to have been entered into between the said Hezekiah and Thomas Boone, and the complainant, Chiles, of the due and legal execution of all instruments and contracts, as far as they have any influence on the rights and interests of this defendant, he requires complete and satisfactory proof. This defendant is equally ignorant of the sales and transfers alleged, to have been made by the said John South, in his life time, of part of the said 1,400 hundred acres of land, or in what manner the heirs of the said South become divested of their interest and claim of said bond, which the complainants themselves allege he was once entitled to, and of which he long held the possession, as it would seem by virtue of an assignment purporting to be for a valuable consideration; and this defendant calls upon the complainants to manifest by satisfactory proof, by which, if any legal or competent authority they derived the said bond, and by whom, or under whose directions or authority the said assignment to the said John South, was erased from the back of said bond.

This defendant further answering, state, that it is manifest from the face of said bond, that the word seven, one of much importance to the sense of said bond, has been written over some other word since the original draught of the said bond, in a larger hand writing than that in which the bond was first couched, and that an entire line is interlined between two others in the original draught of the bond, which interlineation, as well as the change first alluded to, essentially alters the sense and obligatory force of said bond. Wherefore, this defendant demands of the complainants satisfactory evidence of the alterations in said bond, if originally genuine, and if made by proper authority prior to its execution, or of its assignment by William Hoy, if such assignment was ever made by said Wm. Hoy in his life, as it appears from a comparison of said bond with that executed to him, the said Martin, as alluded to in the complainants' bill, that in the condition of the first named bond, where it is interlined, there is a total incompatibility between it and the bond to Martin, as suggested in the amended bill.

This defendant calls on the complainants to discover to this court, in some rational and legal manner, for the unusual and unreasonable length of time which has been supposed to elapse since the execution of the bond, and the supposed assignment thereof, by the said Wm. Hoy; one of the consequences of which unwarrantable delay, as this defendant alleges, is an entire change in the circumstances and situation of the country, from a wilderness exposed to savage excursions and hostilities, to one of a cultivated and perfect security, and a consequent increase in the value of the said land from ten to twenty fold; and this defendant is advised further to insist and rely on the length of time which has elapsed since the sale of the supposed assignment of said Wm. Hoy, on which they are supposed to be charged herein as a bar to the relief prayed for, in and by the complainants' said bill.

This defendant does not admit the complainants are entitled to sue together as complainant in the present suit, or to unite in any other manner; and further denies all fraud and confederacy with which he stands charged, &c.

This respondent further saith, that it is not true, that to increase

the difficulties of the complainant as charged in said bill, that John Newland and wife conveyed their interest to the lands in controversy to this defendant, &c.; but, on the contrary, this respondent avers, that the contract he made with John Newland, and Celia, his wife, was a bona fide contract in good faith, for a valuable consideration paid them without notice, or even a knowledge that the complainant, Chiles, had, or any of the other complainants, any claim on said land; but, on the contrary, this defendant has been informed and believes, verily, that the claim of the complainant, Chiles, is founded in fraud and imposition, in order to harrass and impose on the ignorance of the heirs of Wm. Hoy, and this respondent, and the infant heirs and feme coverts, children of said John South, deceased; and he trusts and hopes that the court will examine all the transactions of the said Wm. Chiles and the other complainants, with a jealous eye and scrutiny of their whole conduct; as to the contract between this respondent and John Newland and wife, it is committed to record and will speak for itself; and this respondent believes the complainant, Chiles, has misrepresented the true meaning thereof. This respondent is ignorant of all the transaction between the complainants and Wm. Hoy, John South, and the other persons alluded to in the bill; he has answered fully so far as respects his own transactions as he is advised, and as to the transactions of others as charged in the bill; he has no recollection or knowledge of, save the death of Wm. Hoy, and the children left by him, and even that, is hearsay; therefore he prays to be hence dismissed, with his costs herein expended allowed him, &c.

Signed,

GREEN CLAY.

Bourbon circuit court, sct. August term, 1819. Sworn to in open court. Attest:

Signed,

THO. ARNOLD, *Clk.*

The following are the rules and orders had and taken in this cause, to wit:

At the August term, 1818, on motion of the defendants, by their counsel, it is ordered that the complainants do, on or before the first day of October next, file the exhibits referred to in his bill filed herein; and the cause is continued until the next term.

At which time, to wit, the November term, in the year last aforesaid, on motion of the complainants, by their attorney, leave is given them to amend the original bill herein, by filling the blanks therein with the names of Edward Brown and Sally, his wife, and also to file an amended bill, which is done accordingly; and leave is given either party to take depositions herein, upon legal notice.

And afterwards, to wit, at the May term, 1819, on motion of the complainant, by his counsel, leave is given him to file an amendment to his bill herein, which is done accordingly; and, on motion of the said complainants, an injunction is awarded them, enjoining and restraining the said defendants, the heirs of Wm. Hoy, deceased, from executing any writ of possession on the

lands in the bill mentioned, being fourteen hundred acres, patented in the name of William Hoy, assignee of Reuben Searcy, and especially the writ of possession now in the hands of the sheriff, until the further order of the court herein, upon the said complainant, William Chiles, entering into bond with Henry Daniel, security, in the penalty of two thousand dollars, conditioned agreeably to law; and it is ordered that said injunction issue immediately: and the cause is continued.

At which time, to wit, the August term, 1819, the defendants filed their answer to the complainants' bill. And at a subsequent day of the same term, on motion of the complainant Chiles, leave is given him to withdraw the original bond from Searcy to Hoy, and the article of agreement between Hezekiah Boone, and also the article of agreement between Hezekiah Boone, George, and William Chiles, for the purpose of proving the same, the clerk first taking and retaining correct copies thereof, with their assignments; and the defendant, Green Clay, exhibited his answer herein, and made oath thereto in open court: ordered that the same be filed.

And afterwards, to wit, at the May term, 1820, on motion of the defendants, and on oath made, it is ordered, that this cause be continued until the next term; therefore, it is considered by the court, that the complainant recover against them his costs occasioned thereby; and, on motion of the said defendants, leave is given them to take the depositions already taken; and, on motion of the complainant, leave is given him to file a supplemental bill herein, which is done and filed accordingly.

From which time, to wit, the term last aforesaid, till the November term, in same year, this cause stood continued.

At which time, to wit, the term last mentioned, the defendants filed their answer herein to the amended bill of the complainant; and thereupon the cause is continued.

And at the May term, 1821, George Boone, one of the complainants herein, having departed this life, ordered that this cause be and stand revived, by consent of parties, in the names of William Squire, John Samuel, and Edward Boone, Jesse Coffer and Betsy, his wife, late Betsy Boone, Solomon Simpson and Sally, his wife, late Sally Boone, Peter Tribble and Polly, his wife, late Polly Boone, William Hume and Susannah, his wife, late Susannah Boone, Joseph Steel and Maria, his wife, late Mariah Boone, Enoch Wilcox, Nancy Helms, late Nancy Wilcox, William Jesse, and Asa Wilcox, children and heirs at law of Nelly Wilcox, late Nelly Boone, heirs at law and representatives of the said decedent.

And at a subsequent day of the term last mentioned, by consent of parties, it is ordered that this cause be and stand revived in the names of, and against, Allen Herne, Thursy Herne, and Solomon Herne, Mahala Toldston and William Toldston, her husband, children of Susan Herne, late Susan Boone, Joseph Helm, son of Munitia Helm, late Munitia Wilcox; and, on motion of the defendants, a dedimus is awarded them to examine and take the deposition of Reuben Searcy, of Indiana.

And afterwards, to wit, at the August term, in the year last aforesaid, this cause came on to be heard upon the bills, answers,

depositions, and exhibits; and arguments of counsel on both sides being heard, and because the court will advise thereon, day is given the parties here, &c.

And at a subsequent day of the term last mentioned, the defendants, by their counsel, tendered the following bill of exceptions, to wit:

Be it remembered, that on the trial of this cause, the defendant, Chiles, introduced the following amended bill, setting forth the loss of a bond executed by R. Searcy to William Hoy, and assigned by Hoy to George Boone, and by him to Thomas Boone; (here insert said amended bill and affidavit, see them copied on a preceding page:) he then was about to read the following copy of said bond, with the assignments thereon written, having previously read the deposition of C. Caloway, to prove the execution of the original bond, and the depositions of N. Hart and McMillen, to prove the assignments, to wit, (see them copied;) to the read of said copy, on the foregoing evidence, there being no evidence that it was a copy, but the attest of John S. Bowling, deputy clerk, the defendants objected, and also on the ground that the clerk had delivered bond to Chiles, as appears by the clerk's endorsement on said copy in these words, to wit: "The original delivered to Wm. Chiles p order court, August term, 1819;" but the court overruled the objection, and the copy of bond and assignments were read; to which opinion the defendants except, and pray their exceptions to be sealed, which is done.

(Signed) JAS. CLARK. [SEAL.]

And at a subsequent day of the term last aforesaid, the court, being now sufficiently advised of and concerning the premises, doth decide, that the complainants are entitled to a specific execution of the bond relied on the bill, and the assignment thereon by Hoy; and it is decreed and ordered that, according to the prayer of the bill, they recover of the defendants, who are the heirs of William Hoy, and Green Clay, seven hundred acres, the first choice of the settlement and pre-emption patented in the name of Hoy, assignee of Searcy; and for the purpose, it is ordered that Zachariah Eastin, the surveyor of Bourbon, do go upon the land, and there survey and lay off the said choice, as taken in the bill, commencing at the southwest corner of the settlement and pre-emption; thence east, with the ancient line till it intersects a line of George Ruddell's pre-emption; thence, with Ruddell's line, to Stoner's fork; thence, with Stoner, to Ruddell's settlement corner, and with his settlement line so far that a line parallel to the first chosen line, and extending to the line of the original survey, shall include the quantity of seven hundred acres; provided the above boundaries shall leave the residue of the tract in reasonable form; and if it shall do so, then the choice is to be so far varied as not to leave the residue of the tract in an unreasonable shape: and as the complainant, William Chiles, holds a conveyance from Sappington and wife, and William Hoy, for all their interest in the settlement and pre-emption, which entitled him not only to their share of the legal title of the seven hundred acres, but also to their proportional shares of the residue, it is therefore, decreed and ordered, that the said Eastin, as commis-

sioner, do lay off and assign to said complainant, Chiles, two-eighths and two-ninths of another eighth, in good form, and in one body, if practicable with regard to the interest of the remaining heirs, if not, then in more parcels, laying all in as good form as practicable. But this last division of the parts of Mrs. Sappington and William Hoy is to be made with regard to quantity, quality, local situation, interfering claims, and adverse possession, so as not to give the complainant, Chiles, more than equal proportion of good and safe land than is retained for the rest of the said surveyor and commissioner is directed to report to court to enable the court to make a final decree herein. The survey is further directed to lay down the interfering claims, with the settlement and pre-emption of the said William Hoy, assignee of Searcy.

And now at this time, to wit, the month and year first herein written, this cause came on to be heard on the surveyor's and commissioner's report, and depositions, and exhibits in the cause; and the court, being now sufficiently advised, &c., doth order and decree, that the complainants recover of the defendants the following parcels of land: seven hundred acres, part of William Hoy, assignee of Reuben Searcy, settlement and pre-emption lying on Stoner's fork of Licking, and bounded as follows: Beginning at a fallen buckeye, the southwest corner of said settlement and pre-emption; thence with the settlement line north eighty-eight, east 446 poles, to a forked cherry tree, crossing Stoner at 304 poles; thence with Ruddell's line north 26°, west passing a post corner to Smelser at 144 poles, course continued 224 poles to an oak and suggar tree on the bank of Stoner, corner to said Ruddell's pre-emption, course continued in all down the creek 330 poles to an oak hickory, haw, and hornbeam on the bank of said creek; thence south 88, west 1,298 poles to a stake in Hoy's old line, one pole south 27°, west from a sugar tree; thence with Hoy's line south one and a half degrees, east 303 poles to the beginning. Also, the following parcel of land, containing three hundred and eighteen acres and three-eighths, being part of said settlement of Hoy, assignee of Searcy, and bounded as follows, to wit: Beginning at a stake in the line of the survey of 700 acres; thence running north two degrees, east 90 poles to a fallen hickory and sugar tree, corner to George Ruddell's settlement, on a clift of the south fork of Licking; thence north 88°, east 140 poles to a stake; thence north one degree and a half, west 104 poles, crossing the south fork of Licking, to a stake in Hoy's old line, on the north bank of Licking, about two poles above five marked beeches; thence with Hoy's line south 88°, west 343 poles, crossing South Licking twice to a stake Hoy's old corner in a field; thence with his line south one degree and a half, east 188 poles *poles* to a stake in Evault's meadow, corner to the aforesaid survey of 700 acres, one pole south, 27 west from a sugar tree; thence with a line of said survey of seven hundred acres north 88°, east 196 poles to the beginning. It is further ordered and decreed, that the said defendants, on or before the first day of January next, convey to the complainant, William Chiles, the aforesaid two tracts of land, by the metes and bounds aforesaid, by deed of bargain and sale, with only special warranty, and in default of their making such

conveyance on the said first day of January, that Thomas P. Smith is appointed a commissioner, to make such conveyance for them to said Chiles. It is further ordered, that the defendants pay to the complainant their costs expended in and about this suit.

And, on motion of the defendants for commissioner herein, under the occupying claimant law, which motion being opposed by the complainant, is continued until the next term for opinion.

And afterwards, to wit, on the 15th day of the November term, 1822, came the parties aforesaid, by their attorneys, and the motion of said defendant for commissioners herein under the occupying claimant law being argued, is overruled. Therefore, it is considered by the court, that the complainant recover against the said defendants, his costs by him herein expended.

The following are the depositions issued herein, to wit:

Barbara Smelser, of lawful age, and being duly sworn, deposeth and saith, that her husband, Peter Smelser, settled this place in the year 1791, and that John South came down immediately after, and surveyed and marked out the four hundred acres; which said 400 acres has been held and occupied ever since, under the claim of the said South, who claimed the same under the bond from Reuben Searcy to William Hoy, and assigned by Hoy to George Boone; that at the time we first settled John South represented to my husband that he had traded for the said bond; but, that we afterwards found out that he had not got the bond, but soon after South obtained the bond from George Boone; that shortly after this my husband fell in company with George Boone, at Lexington, and informed him of the taking possession, who appeared to be well pleased at what was done; that she was present, and knows this to be the fact; and this deponent further states, that the place is situate upon the 400 acres as above stated, which is a part of the settlement and pre-emption of William Hoy, assignee of Reuben Searcy, and further saith not.

her
BARBARA + SMELSER.
mark

Nicholas Smith, of lawful age, and duly sworn, deposeth and saith, that in the spring of the year 1798, he bought a bond from John South, for 200 acres of land, which was to be out of the settlement and pre-emption of William Hoy, assignee of Reuben Searcy; that shortly after he got the said bond John South came down and showed me the land; and that he (South) found out that the 400 acres surveyed for Smelser, and my 200 acres would not take all the land; he (South) agreed to let me have the balance, which was supposed to contain 60 or 70 acres; and I lent him $300, which was to go as a payment for the land, and if that sum overrun he was to pay back, and if it fell short I was to make it up. That I took possession of the land, and have held the possession ever since, under the said claim; that I afterwards found out South had no right to sell the land, and brought suit against him, and recovered back my three hundred dollars as above stated, and further saith not.

(Signed,) NICHOLAS SMITH.

Bourbon county, sct.

The foregoing depositions of Barbara Smelser and Nicholas Smith were sworn to, and subscribed before me, this 19th day of October, 1819.

(Signed,) JAMES ROBISON, J. P.

Nathaniel Hart, of lawful age, and duly sworn, deposeth and saith, that he is the son and executor of Nathaniel Hart, deceased; that he has seen and examined the attestation of Nathaniel Hart to a certain assignment, bearing date the 15th of December, 1781, purporting to be the assignment of William Hoy to George Boone, and upon the said paper, containing the said assignment, there is, by way of reference, marked the letter (A.) which said writing purports to be a bond bearing date the 24th September, 1781, executed by Reuben Searcy, to William Searcy, to William Hoy, for the conveyance of seven hundred acres of land, between Martin's station and Rudwell's station, it being part of a settlement and pre-emption that John Martin cleared out on the halves for said Reuben Searcy.

This deponent saith, that he knows the hand writing of his said deceased father, and that he verily knows and believes the aforesaid mentioned attestation to be in the hand writing and the proper act of him, the said Nathaniel, deceased, and further saith not. (Signed) NATHL. HART.

James McMillen, of lawful age, and duly sworn, deposeth and saith, that he was well acquainted with John Tanner and Nathaniel Hart, and with their hand writings, and that the signature of John Tanner and Nathaniel Hart to the transfer or assignment on the bond alluded to, and described in the foregoing deposition of Nathaniel Hart, and marked (A.) is the hand writing of the said Tanner and Hart, and that said Tanner, as he believes, has since departed this life, and further saith not.

(Signed) JAMES McMILLAN.

The foregoing depositions were taken, subscribed, and sworn to, before me, Levi L. Todd, a justice of the peace for Montgomery county. (Signed) LEVI L. TODD.

Caleb Callaway, of lawful age, and duly sworn, deposeth and saith, that he has now before him a bond given by Reuben Searcy to William Hoy, for seven hundred acres of land; bearing date the 24th day of September, 1781, which said bond is marked thus, (A.) and assigned by said Hoy to George Boone, to which said bond this deponent was a subscribing witness, and is well satisfied that the said bond is a genuine one, and is now in the precise situation it stood in at the time I subscribed my name as a witness; that said bond is in the hand writing of said William Hoy; that this deponent was, and is now, well acquainted with the hand writing of said Hoy, and further saith not.

(Signed) CALEB CALLAWAY.

Subscribed and sworn to before David Sawyer, a justice of the peace for Logan county, October 28th, 1829.

Samuel South, of lawful age, and duly sworn, deposeth and saith: That some time in the winter of 1817-18, Benjamin South, in the presence of this deponent, delivered up to William Chiles, under the instruction of William T. Barry, esq. a certain bond given by Reuben Searcy to William Hoy, bearing date 24th September, 1781, conditioned to convey a tract of land containing 700 acres, part of said Searcy's settlement and pre-emption, and marked (A.) That the said Chiles did, at the same time, deliver to the said Benjamin South a certain other bond or bonds, given by John South, in his life time, to one Smelser and others; also one given by the said South to George Boone. The said last mentioned bond was given by the said John South as executor of William Hoy's estate, and which had been given to the said Boone for his interest in the bond before mentioned, marked A., as appears from the assignment erased on said bond, bearing date 6th August, 1792, the erasure took place at the time the said bond was delivered up to said Chiles, and before he got possession thereof. The said deponent saith, that the said bonds given up by said Chiles to Benjamin South, may be among the papers of the said Benjamin, who is now deceased, in the possession of the deponent, but that this deponent cannot at this time lay his hands upon them. This deponent further saith, that the above transaction took place in consequence of the said Chiles producing a power of attorney from George Boone to said Chiles, authorizing him to transact the business in the exchange of the above bonds, and it was done with an assurance that the said Boone, Smelser, and others, were not to have any lien upon the estate of the said John South, deceased, or any other person, in any manner or shape whatsoever; and that the parties were to be placed in the same situation, as if the assignment of the bond to Boone to John South, had never taken place; and further saith not. (Signed) SAMUEL SOUTH.

Subscribed and sworn to October 23d, 1819, before O. G. Waggener, a justice of the peace for Franklin county.

Articles of agreement made and entered into the 30th day of October, 1817, between Hezekiah Boone, of the county of Woodford, and George Boone, of the county of *the county of* Shelby, of the one part, and William Chiles, of the county of Montgomery, of the other part, and all of the State of Kentucky, witnesseth, that the said Hezekiah and George has this day delivered up to the said Chiles all the papers they hold relative to the tract of land containing 700 acres, it being a part of a settlement and pre-emption granted by the commissioners to Reuben Searcy; and the said Hezekiah and George Boone further agrees, that the said Chiles shall have the free use of all the said papers, for the purpose of coercing the title to said land, if any if to be had, if not, to get the amount in cash; and the said Chiles, on his part, is to use diligence in getting the title or the cash for said 700 acres of land, and is hereby authorized to effect the above purposes, either by suit or by compromise, provided the compromise is not for less than three thousand dollars, as he may think the most advantageous to the parties to this article; and the said Chiles further agrees,

on his part, to defray all the expenses of the above mentioned investigation; and when the above business is finished, the said Chiles agrees, further, to pay over the one equal half of the proceeds of the above business, if in cash or bonds, and if in land, the one equal half of what may be obtained to the said Hezekiah Boone, and the other half the said Chiles keeps for himself; and the said George Boone declares himself satisfied with the above contract. For the true performance of the above, the said Chiles and Hezekiah Boone bind themselves each to the other in the penalty of ten thousand dollars. Given under our hands and seals the date above written.

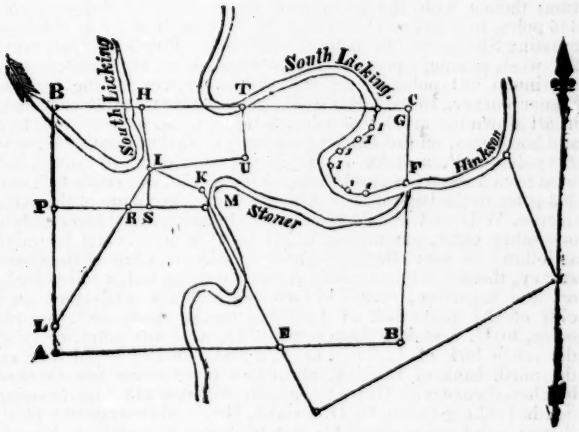
(Signed) HEZEKIAH BOONE, [SEAL.]
GEORGE BOONE, [SEAL.]
Attorney in fact for Thomas Boone.
WILLIAM CHILES. [SEAL.]

Teste:

ELIJAH BANKS,
JAMES THORNTON,
WALTER C. CARR,
WALTER CARR.

A copy: Attest,

(Signed) THO. ARNOLD, C. B. C. C.



[*Scale of 200 poles to an inch.*]

EXPLANATION.

A, B, C, D. William Hoy, assignee of Reuben Searcy's set-

tlement and pre-emption of 1,400 acres, laid down in one inclusive survey, the whole containing 1,921 acres. E, B, F, I, G, is the interference of George Ruddell's settlement and pre-emption of 1,400 acres, with Hoy's claim; that lying north of Stoner and Hinkson is a part of the pre-emption; that north of Stoner, and between Stoner and the south fork of Licking, is part of the settlement. D, H, I, L, is the interference of Flournoy's claim of acres. G, F, 1, G, is Joseph L. Stephens' 89 acres, part of Hoy's claim, conveyed to said Stephens by Wm. Hoy, by deed, dated the day of A, E, M, P, is Wm. Chiles' 700 acres, as decreed, agreeably to his choice. R, I, K, M, is the residue of the safe land, containing 50½ acres. D, T, U, I, is Wm. Chiles' two shares, or two eights and two eights of one eighth, containing 318⅜ acres, so that Chiles' entire share will be 1,018¾ acres. I, S, R, is Chiles' proportion of the residue of safe land, containing 14¼ acres, 11 poles. E, B, F, 1, G, T, U, I, S, M, E, is the residue of the tract remaining for Hoy's heirs, containing an equal proportion of safe and unsafe land, the whole containing 813⅜ acres.

Bourbon county, October 22d, 1821. Surveyed, pursuant to a decree of the honorable Bourbon circuit court, in the suit aforesaid, 700 acres of land, part of William Hoy, assignee of Reuben Searcy's settlement and pre-emption, situate and lying in the county aforesaid, on Stoner's fork, and bounded as follows, to wit: Beginning at A, a fallen buckeye, the southwest corner of said settlement and pre-emption, thence with the settlement and pre-emption; thence with the settlement line, north, 88 degrees, east 446 poles, to a forked cherry tree in George Ruddell's old line, crossing Stoner at 304 poles; thence with Ruddell's line, north 26° west, passing a post corner, to Smelser, at 144 poles; course continued 224 poles, to an oak and sugar tree on the bank of Stoner corner, to said Ruddell's pre-emption; course continued in all down the creek 333 poles, to M, an oak, hickory, and haw and hornbeam, on the bank of said creek; thence south 88°, west 298 poles, to P, a stake in Hoy's old line, one pole south, 27° west from a sugartree, and thence with Hoy's line, south 1½°, east 303 poles to the beginning. Also surveyed, by virtue of the same decree, William Chiles' two shares or two eights *and two eights* of one other eight, amounting in all to 318⅜ acres, and bounded as follows, to wit: Beginning at S, a stake, in a line of the above survey, thence running north 2, east 90 poles to I, a fallen hickory and sugartree, corner to George Ruddell's settlement on a clift of the south fork of Licking, thence north 88°, east 140 poles, to U, a stake, thence north 1½, west 104 poles, crossing the south fork of Licking, to T, a stake in Hoy's old line, on the north bank of Licking, about two poles above five marked beeches, thence with Hoy's line, south 88°, west 343 poles, crossing South Licking twice, to D, a stake, Hoy's old corner in a field, thence with his line south 1½, east 188 poles, to a stake in Evalt's meadow, corner to the above survey, one pole, south 27°, west, from a sugar tree, and thence with a line of said survey, north 88, east 196 poles to the beginning.

(Signed,) Z. EASTIN, S. B. C., *and Commissioner.*

The surveyor further reports, that he has declined laying down all the interfering claims, because they would only render the plat intricate, without affording information equivalent to the difficulty; the interference of George Ruddell's settlement and pre-emption, and that of Flournoy, is laid down: both these claims have an actual possession of more than twenty years, within Hoy's claim; James Trabue's claim of 357½ acres interferes at the S. west corner of the settlement, adverse possession within Hoy's lines; James Trabue's 600 acres also interferes, but there is no adverse possession. The claim of Thomas Elliott for 2,000 also interferes, but has no possession; John Hinkson's pre-emption of 1,000 acres interferes with the last interest allotted to Chiles, and has adverse possession of more than twenty years. There are also two surveys of 60 acres each, made the 24th of February, 1812, in the name of Hinkson's heirs, both lying on the part last allotted to the complainant Chiles, on the north of, and including the south fork of, Licking, in the—(the balance of this record, together with the clerk's certificate, torn off, and not with the papers.)

[*Bond from Searcy to Hoy.*]

Know all men by these presents, that I, Reuben Searcy, of the county of Fayette, am held and firmly bound unto William Hoy, of the county of Lincoln, and State of Virginia, in the penal sum of fifty thousand pounds, current money of Virginia, to which payment well and truly to be made, I bind myself, my heirs, executors, and administrator, unto the said William Hoy, he, his heirs or assigns, this fourth day of September, one thousand seven hundred and eighty-one.

The condition of the above is such, that, if the above bound Reuben Searcy shall well and truly make, or cause to be made, as soon as deeds is made to lands in this country, in general, a good and sufficient deed for seven hundred acres of first rate land laying in Fayette county, on Licking creek, betwixt Jno. Martin's station and Ruddell's station; it being part of a settlement and pre-emption that Jno. Martin cleared out on the half for said Reuben Searcy, and the said Hoy takes his first choice of the land; then the above obligation to be void, otherwise to remain and be in full force and virtue.

REUBEN SEARCY. [SEAL.]

Signed, sealed, and delivered in presence of us,

JESSE CARTWRIGHT,
CALEB CALLOWAY.

A copy—Attest:

JNO. S. BOWLING, D. C. B. C. C.

The following are the endorsements on the foregoing bond, to wit:

"I, William Hoy, assign over the within bond unto George Boone, his heirs or assigns; and said Hoy obliges himself, his heirs, executors, and administrators as *hourety* to within bond; and if the within lands cannot be obtained by reason of a prior claim, then and in that case, seven hundred acres, equal in quality

and convenience, shall discharge the within bond. Witness my hand this fifteenth day of December, 1781.

(Signed) WILLIAM HOY."

Teste: JOHN TURNER,
NATHL. HART.

I do hereby assign over all my right, title, and claim of the within bond unto Thomas Boone, his heirs or assigns, without recourse to the same; that is to say, that I, the said George Boone, am no was obligated, if the said William Hoy, or his heirs, sufficient to make good the within bond; but if the said William Hoy, or his heirs, should not be able, then I, George Boone, do bind myself, my heirs, to make good the same unto the said Thomas Boone, or his heirs or assigns. Witness my hand, this 30th day of April, 1783.

(Signed) GEORGE BOONE.

Teste: WILLIAM HUNTER.
Attest: JNO. S. BOWLING, D. C. B. C. C.

[*Agreement between Hezekiah and Thomas Boone.*]

Article of agreement made and agreed upon, this 30th day of November, 1802, witnesseth, that Thomas Boone, of the State of Pennsylvania, hath bargained and sold, unto his uncle Hezekiah Boone, of the State of Tennessee, in Carter county, a certain tract of land, containing seven hundred acres more or less, lying on the waters of Licking, in the State of Kentucky, being one *par* of a settlement and pre-emption right of Reuben Searcy's claim, which the said Thomas Boone purchased of Squire Boone; but Ciercey's obligation was transferred to the said Thomas Boone by George Boone; the said George Boone bound is surety for the title for the consideration of seven hundred pounds, lawful money of Pennsylvania, to be paid unto the said Thomas Boone, or to his heirs, within four years from the date hereof, at the choice of said Hezekiah Boone, or his heirs, at any time within the said term of four years, to take the land or not as may *sute* them best; and the said Thomas Boone binds himself, his heirs, to make a good and lawful*l* title to the said Hezekiah, or his heirs, at any time within the four years aforesaid, at receiving the consideration money in full; the said Hezekiah Boone covenanted and agrees to give to the said Thomas Boone, in part, or in full, all his and his brother Josiah Boone's share in lands belonging to their father, George Boone, deceased, in the State of Pennsylvania; the said Thomas Boone is to receive their shares of the money*es* arising from the land sold, or to be sold, and to keep a regular account of all money*s* that is coming to the said Josiah and Hezekiah Boone arising from the said land, and *and* account to them for the sa*m* as payment or part thereof, for the above mentioned seven hundred pounds, if they shall conclu*d* to take the land aforesaid. In witness whereof, we bind ourselves, our heirs, the day and date above mentioned.

THO. BOONE. [SEAL.]
HEZEKIAH BOONE. [SEAL.]

Witnesses present,
MORDECAI LINCOLN.
THOMAS LINCOLN.

Letter referred to in Josiah Boone's deposition.

December, Yr. 10th, 1809.

[*Letter referred to in Josiah Boone's deposition.*]

Beloved cousin, Thomas Boone:

After my best compliments to you, I write to you as from the brink of the grave, to thee, to inform thee that we are all as yet in the living, and in the place of hope, thank God, the giver of every good and perfect gift; hoping with cincerity, that these may find thee and thine in a comfortable state of health, and likewise to inform thee of the state of thy affairs in this country. As for General John South, he is going fast to ruin; he has been in confinement sometime, as a man insane; that nothing can be done with him. William Cunningham and myself have used all the means in our power to recover some land of him, and George Boone give his assistance; but all of no avail. Mr. South put us off with the most plausible promises, from time to time, until myself and my son Solomon, and two of my sons-in-law are almost ruined, renting for a small season, waiting with an expectation of obtaining some land, and to no purpose; and now they are all left the parts, but Solomon Cunningham and myself, and we are wanting to look for some place of residence. We could not sue till this fall, for Hoy's heirs was not of age; and now we have no power to sue, and George Boone will not, as he has moved a distance, and wish to inthrall himself in his old age; and it appears a great risk whether any thing can be recovered, and perhaps the costs to pay. I expect by March court, we will have some knowledge whether there will be any prospect of any thing to be come at; and by that time I wish you could be here. And providing *is* out of your power to come yourself, and finds it convenient to change your land here for the land up the Delaware, then write to me by the post, to the post office in Versailles, in Woodford county, and send a sufficient power of attorney, with the county seal. But I would rather, if you could by any means, come yourself, as we cannot expect any thing done until you either attend yourself or send a sufficient power of attorney; for George Boone will not do any thing himself, is, as he considers himself, not liable by taking South for the land, and the approving of it likewise. George Boone is not liable until Hoy's heirs prove insufficient. If beshure, he will not sue, and we are not able to undertake so costly a suit, we think it best to show good authority, and propose suing then, then we expect, *then we expect* all parties will give something rather than be involved in a law suit. The law is very costly here; so whatever we do, let it be done in the safest manner, least we be unsuited, and be kept running back and forward, from here to Pennsylvania, until wearied. But send thy determination by the post, and I and William Cunningham assist as far as able.

[*Copy of Chiles' answer.*]

The separate answer of William Chiles to a bill in chancery, exhibited against him and others in the circuit court of Bourbon county, by John Smelser and Anna Maria, his wife: This respondent saving all just exceptions to the numerous errros,

insufficiencies, and untruths, appearing in the bill of the complainants, for answer thereto, he saith it may be true, and he is willing to admit the intermarriage of the complainants, as set forth in their bill. It may be true also, and your respondent is willing to admit, the will of Peter Smeltser, deceased, and the devisees therein contained, as stated by the complainants. But your respondent positively denies that the said Peter Smeltser, deceased, ever had any right to the land claimed in the bill of the complainants, either legal or equitable. It is true, that the land was entered and surveyed in the name of Reuben Searcy, and patented in the name of William Hoy. John Martin had located the warrant for Searcy; in consideration of which, Searcy had given his bond to convey to said Martin seven hundred acres, being one half of the tract; a consideration which very usually given for such service, in the time of entering lands in Kentucky. Martin sold his half to Hoy, and Hoy bought of Searcy the remaining half, and took his bond to convey it; and by or on amount of both contracts, between the said Hoy and Searcy, and Martin and Searcy, the said William Hoy obtained the patent in his own name, for the whole tract of 1,400 acres. Before the patent issued, the said William Hoy assigned the bond from Searcy to himself to George Boone, who afterwards assigned it to Thomas Boone, who afterwards sold the land to Hezekiah Boone, who afterwards sold the land to your respondent, William Chiles. The transfers from Thomas Boone to Hezekiah Boone, and from him to your respondent, were not made by assignments on the bond, but were made by writing upon separate papers, which are now filed in the suit of Chiles against Hoy's heirs and others in this court, as spoken of in the complainants' bill, your respondent did find said bond in the possession of Benjamin South, the brother and executor of John South, after his decease, and obtained the possession of said bond from said Benjamin South, not by any fraud or misrepresentation, but rightfully, as your respondent had purchased the equitable right of the land from Hezekiah Boone, as above stated, and that was a part, and a necessary part, of the evidence to enable your respondent to enforce his equitable right against the representatives of William Hoy, and obtain from them the legal title. The said John South had first sold the four hundred acres of land in the bill mentioned, to the said Peter Smeltser, deceased, pretending that he had purchased said bond given by the said Searcy to the said William Hoy, and afterwards obtained from the said George Boone, as the agent of the said Thomas Boone, who then lived in Pennsylvania, an assignment of the said bond given by said Searcy to William Hoy, and assigned to the said Thomas Boone, as above set forth; but your respondent expressly denies that the said George Boone had any authority from Thomas Boone either to sell the land, or assign or deliver the bond to the said John South, or any other person. It is true, the said George Boone was the agent for Thomas Boone; having special power to ask, demand, sue for, and recover from William Hoy, a legal conveyance of said seven hundred acres of land; and this was the full extent of his power, as will fully appear by a true copy of the letter of attorney, in that behalf made; which copy is herewith

filed as a part of this answer, and marked with the letter (A); which copy was taken from the orignal by your respondent, who found it in the hands of the said George Boone; but your respondent never had the original, to the best of his recollection; nor does he know where it is now. It is true, the said George Boone, under color of said power of attorney, and, either under a mistake concerning the extent of his authority, or being, by the persuasions or misrepresentations of the said John South, induced to do so in the name of the said Thomas Boone, and assuming the character of his agent, made an assignment on said bond to the said John South, which assignment was cancelled by the said Benjamin South, before he delivered the bond to this respondent; which cancelment your respondent supposes the said Benjamin South had a right to make, as the assignment was made without any authority, and was calculated to impose on the world. It is true, your respondent obtained leave from your honorable court, for the purpose of taking depositions to prove its execution, to withdraw it from the files of the court, upon leaving a copy thereof; which copy was made by the clerk, and is now filed in the suit in the said court, in which your respondent was complainant, and the heirs of William Hoy were defendants; and your respondent admits it to be a true copy. But your respondent most positively denies that he has the original bond, and he also denies that he has any knowledge where it is, or who has it, or what became of it. After your respondent had taken the deposition above spoken of, he gave it to Benjamin Mills, esq., and he returned it to the clerk from whence it had been withdrawn, in the presence of your respondent, and it remained in the bundle with the other papers in said suit, for a considerable time after, when your respondent missed it from among said papers, and never was able to obtain any clue to trace it by; and your respondent verily believes it was stolen out of the said bundle by some person who thought himself interested in its destruction, at the time that the said John South first sold the land to Peter Smeltser, deceased. He gave his bond to said Peter, with Walter Carr and John Glover as his securities, binding them to cause Hoy's heirs to convey to said Peter four hundred acres, by metes and bounds, as stated in said bond. That bond your respondent found in the hands of the said Peter Smith, and obtained it from him, and delivered it up to Benjamin South. At the time that the said George Boone, as the agent of the said Thomas Boone, made the assignment on Searcy's bond, as above spoken of, the said John South gave the said George Boone his bond; binding himself to cause Hoy's heirs, so soon as they all come of age, to convey to Thomas Boone the said seven hundred acres of land, if it should be saved from other claims, or if it was lost, an equal quantity of land, and as good in quality; which was the only consideration the said John South gave for the said pretended assignment to him on Searcy's bond. This last mentioned bond your respondent obtained from George Boone, and gave up to Benjamin South at the same time that your respondent obtained from him, said Benjamin South, the bond, as above related.

The bonds given to Peter Smeltser and to Thomas Boone by John South, were given up by your respondent to Benjamin South.

The bond given by John South to George Boone, as described, was delivered up to your respondent by the said George Boone as a matter of right, in the presence of Hezekiah Boone, and with his consent, without any new consideration or inducement. And your respondent thinks the complainants have no right to gainsay it; the bond given by John South, Walter Carr and John Glover, was delivered up to your respondent by Peter Smith and Jacob Smeltser, and your respondent denies that he made any misrepresentation to them for the purpose of obtaining it. Your respondent informed them that he was legally entitled to the benefit of Searcy's bond, by virtue of the assignments and contracts above set forth, and that the assignments of said bond to John South by George Boone pretending to be the agent of Thomas Boone, was totally void, because the said George Boone had no authority to make the assignment, and that your respondent expected to recover the land, and that they could not recover pay for their improvements under the occupying claimants law, but your respondent did not represent to them that he had the lega! title of William Hoy. The consideration given to the said Peter Smith and Jacob Smeltser, for the bond of South, Carr and Glover, was this: Your respondent entered into an article of agreement with them, by which your respondent bound himself to convey to them Hoy's title to the land, for which they bound themselves to pay your respondent at the rate of ten dollars for each acre, when in fact the land was worth at least twenty-five dollars in specie. By a comparison of the intrinsic value of the land, with the price for which your respondent sold it, it will be seen that your respondent gave to the said Peter Smith and Jacob Smeltser at the rate of fifteen dollars for each acre, for the bond on South, Carr and Glover, which your respondent believes to be much more than could have been recovered of the said South, Carr and Glover, upon said bond. The complainant, John Smeltser, had sold to Jacob Smeltser, one hundred acres, a part of that which he claimed in right of his wife, and at the time your respondent contracted with the said Peter and Jacob, the said John held possession of the remaining sixty-six and two-thirds. Under these circumstances your respondent brought the action of ejectment, in the name of Hoy's heirs, not under any arrangements with Peter Smith or Jacob Smeltser, but for the purpose of securing to himself the possession of the land which he had not sold to the said Peter Smith and Jacob Smeltser, there being the sixty-six and two-thirds acres, still in the possession of the complainants, and fifty acres more in the possession of Nicholas Smith, which he claimed under an adverse claim, and about fifty acres more, which your respondent had not sold, and for this additional motive, that your respondent might have it in his power to take possession of the whole seven hundred acres if it should become necessary to do so. Ever since the day of he has had the legal title to upwards of 500 acres by a conveyance from two of the heirs of William Hoy, deceased. Your respondent has since obtained a conveyance of William Hoy's title to the whole seven hundred acres, under a decree of your honorable court, and is now ready to convey to the said Peter Smith, Nicholas Smith and Jacob Smeltser, whenever they shall pay him the purchase money and apply to him for a deed. After the judgment in ejectment, and after the said Jacob Smeltser

had commenced his action against the complainant, John, to recover back the purchase money of the one hundred acres, viz: on the 23d October, 1818, the said John Smeltser, sent a messenger with a letter to your respondent, informing him that he would be bound by the article, which the said Peter Smith, and Nicholas Smith, and Jacob Smeltser had made with your respondent, which your respondent took to be the conclusion of a bargain between them, as your respondent had made him the offer, and left a blank in the article for his name in case he should choose to accede to the proposition, which letter is herewith filed and marked (B,) and your respondent is yet willing to consider it a contract and to comply with it as such. With respect to the balance of the sixty-six and two-thirds acres, which remained in the possession of the complainants, he has always held it until lately, your respondent supposing it to be sold to the complainant by force of the letter above spoken of until lately, but at what time, your respondent does not know, the said complainants, John and Anna Maria, his wife, by writing under seal, sold the said sixty-six and two-thirds acres to the said Jacob Smeltser, and gave him the possession and he now holds it; as to the question between Jacob Smeltser a defendant, and John the complainant, either Jacob is entitled to a conveyance from the defendant on complying with this article, and as Jacob, since giving up the bond of South, Carr, and Glover to this defendant by sale, has recovered back his money from John, John or his vendee may be entitled to it on the same terms. This defendant is bound to convey it on the reception of the money to some one of them; by the letter and contract he will do it as the court may direct. Your respondent insists that the said John Smeltser shall not be allowed to obtain a decree in this suit against his own deeds, and that he has no equitable right to the land, inasmuch as John South, under whom he claims, had no right in equity to any part of the land. Your respondent is informed and believes, that the complainants have sold and conveyed their interest in the lands claimed in this suit, to George W. Baylor, Esq. and that they now have no interest in the same. Your respondent therefore prays, that the said John Smeltser and Anna Maria his wife, and George W. Baylor, may be made defendants to this answer, and true and perfect answers make to this allegation, on their corporal oaths, and that they may discover and set forth the deed of conveyance and file the same, and for this purpose that subpœna may issue against them, requiring them to appear and answer, &c. This defendant denies all fraud, and prays to be hence dismissed with his costs, &c.

Bourbon circuit court, sct. May 17, 122. Sworn to in open court, by Wm. Chiles.

Attest: JAS. ARNOLD, D. C.

A copy: Attest: THO. ARNOLD, Cl'k.

[*Smeltser and wife to Baylor; deed.*]

This indenture, made this twenty-fifth day of August, in the year of our Lord, one thousand eight hundred and twenty one, between Anna Maria, alias Mary Smeltser and John Smelser her husband, of the county of Miami and State of Ohio, a party of the first part, and George W. Baylor of the county *county* and

State of Kentucky a party, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of six hundred dollars, current money of the United States of America, to them in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell, convey and confirm, unto the said party of the second part, all the right, title, and interest, either in law or equity, they the said John and Anna Maria hath, in and to a certain tract of land lying on the waters of Stoner, county of Bourbon, State of Kentucky, being a part of a tract which Peter Smeltser deceased, father of said Anna Maria, purchased from John South and McMillen, and the one third part of the whole tract was devised by said Peter to said Anna Maria in common with Jacob and John Smelser, to be by them divided in three equal parts, being the same tract of land upon which the said Peter in his life time resided, and which the said Anna Maria and John her husband, and John Smelser and Jacob Smelser, under the will aforesaid, made choice of according to the provisions thereof, together with all and singular the premises thereunto belonging or in any wise appertaining; to have and to hold the said tract of land and premises aforesaid, with every of its appurtenances, unto the said party of the second part, his heirs and assigns forever. And the said party of the first, doth covenant and bind themselves, heirs, executors and administrators, to warrant and defend the land and premises aforesaid, and every of its appurtenances, unto the said party of the second part, his heirs and assigns, against the claim or claims of them, the said Anna Maria, and John her husband, and all persons, claiming, by, through, or under them, but not against the claim of any other person or persons whatever. In testimony whereof, the said party of the first part, hath hereunto set their hands and seals, the day and year first above written. In the 4th line, the word "Ohio;" in the fifth line, the words "of Kentucky;" in the tenth line, the words State of Kentucky, interlined before signed, and also, in the seventh line the words "of the United States of America," interlined before signing.

her
MARY + SMELSER, [L. S.]
mark.
JOHN SMELSER. [L. S.]

Signed, sealed and delivered, in the presence of
CORNELIUS WESTFALL,
JOHN TALD,

State of Ohio, Miami county, sct.

We, the undersigned, two of the justices of the peace, in and for the State and county aforesaid, being duly commissioned, do certify that the within named John Smelser, and Anna Maria, alias Mary, his wife, did both sign, seal and acknowledge this deed of bargain and sale, from them to George W. Baylor, to be their act and deed for the purposes therein specified; and we further certify that we did, in the absence of the said John, and privily and apart from her said husband, after the said Anna Maria, alias Mary, had

signed and sealed said deed, shew and explain to her the within deed, with her signature therunto annexed, and that she the said Anna Maria, alias Mary Smelser did then and there, freely and voluntarily declare the same to be her act and deed, and wishes not to retract it, declaring that she had willingly signed it, and consenteth that it may be recorded.

Given under our hands and seals, this 27th day of August, 1821.

RICE B. LAWRENCE, J. P. [SEAL.]
A. SHULTZ, J. P. [SEAL.]

The State of Ohio, Miamicounty, ss.

I, Cornelius Westfall, clerk of the court of common pleas of the county aforesaid, do hereby certify that Rice B. Lawrence, esq., and Andrew Shultz, esq., before whom the above acknowledgment is stated to have been taken, *is* and *was*, at the time of the taking thereof, two of the justices of the peace, within and for said county, duly commissioned and sworn as such, and that full faith and credit is and ought to be given unto all *his* judicial acts, as well in courts of justice as thereout.

In testimony whereof, I have hereunto set my hand, and affixed the seal of our said court at Troy, the twenty-seventh day of August, one thousand eight hundred and twenty-one.

CORNELIUS WESTFALL,
Clerk, M. C. C. P.

Entered for record the 27th day of August, 1821, and recorded the same day in the records of Miami county, in book D, page 411 and 412, by me.

CORNELIUS WESTFALL,
Recorder for Miami County.

[*Peter Smeltser's will.*]

In the name of God, amen, I, Peter Smeltser, of Bourbon county and State of Kentucky, being sick and weak in body, but in sound and disposing mind and memory, do make, publish, and declare the following instrument of writing as my last will and testament, of, in, and concerning my worldly *and* estate, wherewith the Lord hath blessed me, in manner as followeth, &c.

First, it is my will, and I do hereby order that my well beloved wife, Barbara, shall have, and I do hereby bequeath unto her, all the lands lying on Stoner, bought of John South, containing between four and five hundred acres, with all and every of the improvements, appurtenances thereupon, and in any wise thereunto belonging, to her the said Barbara, my said wife, and to and for her only proper use and behoof, for and during the time and term, till my youngest son, Jacob, shall come to his full age of twenty-one years; and from that time she, my said wife, shall *and* hold of said land one-third, including all the improvements, during her natural life; and further I will and bequeath unto my said wife, Barbara, all that tract and parcel of land, lying near George Hershman, in the aforesaid county of Bourbon, containing about one hundred and thirty acres of land, with all and every of the improvements to and for her proper use, for and during the time and term till my youngest son, Jacob, shall be of

the full age of twenty-one years; and further, I do hereby will and bequeath unto my said wife, Barbara, all my personal estate, that is, horses, cows, sheep, hogs, and all and every of the household goods and furniture, and all cuteriments or any movables of or on my said place, where I now live, or elsewhere, any thing in any wise belonging to me, to her, and for her only proper use and behoof; and it is further my will, and I do hereby order, that my said wife Barbara, have full right and power, in law or equity, to act and to do all *all* things as she may think proper, without being accountable to my said children, hereafter mentioned; that is, during the time till my youngest son, Jacob, comes to lawful age, as aforesaid; at which time all my personal estate, which at that time may be in her hands and possession, and whatever she may at the time add thereto, shall be sold at public vendue; and the moneys therefrom arising my said wife Barbara, shall have one third, and the remainder to be equally divided between all my children which may at that time be alive, or to such of their children. Now be it remembered, and it is my will, and I do hereby order that my said wife Barbara, for and in lieu of the above legacies, bring up my said children; that is, Mary Elizabeth, John, Anna Maria, Jacob, Eve, Elizabeth, and Margaret, in a Christian like manner, and give them such learning as may necessary amongst us Dutch people; that is, common learning, with all other necessary assistance, as the case may require: whereas, I, the said Peter Smelser, hold six hundred acres of land, be the same more or less, in Mason county, in the State aforesaid, on the waters of Fleming, bought of Jacob Myers, I now hereby will and bequeath the said land and premises, as also the place near George Hershman's, in Bourbon county, containing one hundred and thirty acres, be the same more or less, as also the lands whereon I now live, containing between four and five hundred acres of land, be the same more or less, in Bourbon county, unto all my children, and Peter Smeltser, my eldest son, Barbara, wife to Philip Doubenspeck, Catharine, wife to Melchi Koutsman, Mary Elizabeth, John, Anna Maria, Eve, Elizabeth, and Margaret, and Jacob, my youngest son, in the following manner and condition: and that is, as soon as my youngest son, Jacob, shall come to lawful age of twenty-one years, or in case of his death at that time and terms, it shall and may be lawful for my said children, or the husband of such as may be married, to choose amongst themselves, (or a majority of them,) three honest freeholders, to price and value all my said lands, or a majority of them, and to set a just value on them in the following manner: and the first mentioned six hundred acres to be, before the valuation, equally divided in three lots, as suitable and convenient for three settlements as the case will admit, and so to fix the price agreeable to the value of its quality; the place and land near Hershman's, to be valued to its price, with improvements; the home place in the same manner, it being first divided in such parts for settlements as may suit; and after such valuation, the sums, in the whole appearing, shall be equally divided between all my above mentioned children, or their heirs, share and share alike, either in lands, cash, or otherwise. And be it remembered, that in case

any of my said children settle and improve any of the said lands, that their improvements are not to be valued, but only the lands; and that, after such settlement, valuation, and division, and of such my lands that my children then shall have, shall be their right, title, and estate, to them, their heirs, and assigns; provided, it is to be remembered, that the first mentioned lands to have been bought of John South, there is part lost of William McMullen, whereon my house and most of the improvements which is to be to my said wife Barbara, willed and bequeathed as aforementioned. I further do appoint my said wife Barbara, guardian for and over all my children, which are yet under age. It's further my will, and I do hereby order, that, if any of my children should die before they arrive to their lawful age, then the surviving shall equally divide the part of the deceased. And it is, lastly, my will, and I do hereby order, that my said wife Barbara, shall or may not be held to give bail or security for the executing this my last will. And, lastly, I appoint my said wife Barbara, executrix to this my last will and testament.

Given under my hand and seal, republished and declared as my last will and testament, this 21st October, 1795.

PETER SMELTZER. [L. S.]

Witnesses present:
JACOB FRY.
B. SWOPE.
Some Dutch names.

It is further considered by the testator, that if the within mentioned valuation and division be made of the lands bought of John South and Samuel McMullen, that is, the home place; that if my children, that is, Anna Maria my daughter, and my two sons, John and Jacob, should choose for their part of the said lands, it is therefore my will, and I do hereby order, that they, or either of them, shall have, and it shall be lawful for them so to do, to choose for themselves such lot, and the price of or at the valuation, to be paid in three years thereafter. In witness whereof, I have hereunto set my hand, as within, this 21st Oct., 1795.

PETER SMELTZER. [L. S.]

JACOB FRY.
Some Dutch names.
B. SWOPE.

Bourbon county, December court, 1794.

The last will and Testament of Peter Smeltser, deceased, was proved by the oath of Benedict Swope, Henry Lyon, and Jacob Fry, witnesses thereto, and ordered to be recorded; and on the motion of Barbara Smeltzer, the executrix therein named, who made oath to the same, certificate is granted her for obtaining a probat. thereof in due form.

Test: THO. ARNOLD, C. B. C.

Bourbon county, sct.

I, Thomas P. Smith, clerk of the court for the county aforesaid, do certify that the foregoing will of Peter Smeltser, deceased,

is truly copied from the record in my office. Witness my hand this 17th day of August, 1824.

THO. P. SMITH.
By A. CHS. DICKERSON, D. C.

[*Trabue and wife to Thomas.— Deed.*]

This indenture, made this 21st day of February, in the year of our Lord one thousand seven hundred and ninety-two, between Stephen and Jane Trabue, his wife, of Woodford county, district of Kentucky and State of Virginia, of the one part, and James Thomas, sen., of Bourbon county, district and State aforesaid, of the other part, witnesseth, that for and in consideration of the sum of sixty-one pounds, four shillings, by the said James Thomas to the said Stephen Trabue and Jane his wife, in hand, the receipt whereof is fully acknowledged, they, the said Stephen and Jane his wife, hath given, granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said James Thomas, his heirs and assigns, forever, a certain tract or parcel of land lying and being in the county of Bourbon aforesaid, and on the waters of Townsend Run, a branch of Licking, adjoining of James Thomas on the southwest, and Samuel Taylor on the northeast, beginning at two ashes and a sugar tree, a corner of David Wilson; thence south 31½ deg. west 64 poles, to a hackberry, buckeye, and hickory, it being a corner of Samuel Taylor; thence with his line S 42 deg. east, one hundred and sixty-seven poles to his corner, ash and buckeye; thence north forty-eight east, one hundred and seventy-six poles to an elm and two buckeyes, corner to James Thomas, jr.; thence north sixty-five and a half west, one hundred and ninety poles to a sugar tree and two elms, to a corner of said Thomas, on Wilson's line; thence with Wilson to the beginning, containing by survey, one hundred and fifty acres: to have and to hold the aforesaid land, with the appurtenances and all right and privilege and improvements to the same, or in anywise belonging to him, the said Stephen Trabue and Jane his wife, that he, the said James Thomas, his heirs and assigns, shall and may forever hereafter, peaceably, quietly have, hold, and occupy and possess, and enjoy, the aforegranted land and premises, without the let or molestation of any person whatsoever, and free and clear of all manner of incumbrance whatever; and the said Stephen Trabue and Jane his wife, doth for themselves, their heirs, executors, and administrators, warrant and forever defend the aforesaid land and premises, to him the said James Thomas, his heirs and assigns, forever, against the claim or claims of all manner of person or persons whatsoever. In testimony whereof, we have hereto set our hands and seals, the day and year above written.

STEPHEN TRABUE. [L. S.]
JANE TRABUE. [L. S.]

April court, 1792.

This deed of bargain and sale from Stephen Trabue and Jane his wife, to James Thomas, sen., she being privily, as the law requires, relinquished her right of dower therein, was acknowledged by the said Stephen, and ordered to be recorded.

Test: JOHN EDWARDS, *Clk.*

Bourbon county court, sct.

I, Thomas P. Smith, clerk of said court, do certify that this and the foregoing page contain a true copy of the deed from Stephen Trabue to James Thomas, from the record in my office. Given under my hand, this third November, 1828.

THO. P. SMITH.

[*Flournoy's entry*, 492 *acres.*]

11th May, 1780.—William Flournoy enters 492 acres upon a Treasury warrant, on the waters of Hingston's fork of Licking, joining Wood's, Hingston's, Riddle's, and Higgins', and running south for quantity.

A copy. Test: JNO. FOSTER, *Reg.*

Grant issued 29th June, 1787.

[*James Thomas's will.*]

In the name of God, amen: I, James Thomas, of the county of Bourbon and State of Kentucky, being very sick and weak in health, but of perfect mind and memory, thanks be given unto God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that is to say: Principally and first of all, I give and recommend my soul into the hands of Almighty God that gave it, and my body I recommend unto the earth, to be buried in a decent, christian burial, at the discretion of my executors, nothing doubting but at the general resurrection, I shall receive the same again, by the mighty power of God; and as touching such worldly estate wherewith it has pleased Almighty God to bless me in this life, I give and devise, dispose of the same and following manner and form: First, I give and bequeath unto Sarah, my dearly beloved wife, the thirds of the tract of land that I now live on, or its profits, her lifetime, and likewise the thirds of all the movable estate her lifetime; and likewise I give to my beloved son David Thomas, two hundred acres of land lying on Gray's Run, and the said David is to make a deed unto my son James Thomas, when he shall get a deed from Edward Trabue of one hundred acres of the said land; and the said land is to be divided as it will best answer, that it may equal in the divide, according to the conveniency of the said land, that David Thomas may keep his improvement, the said land, to the whole use of them and their heirs, forever. Also my well beloved son James Thomas I give, and whom I ordain and constitute, make one of my executors of this my last will and testament; also I gave to my beloved son Thomas Thomas, whom I likewise constitute, make and ordain the other of my executors of this my last will and testament, and my son Thomas is to have the land I now live on, containing one hundred and fifty-three acres, more or less; and likewise the negro boy, named Morris, and the whole use of the said land and negro, to him, his heirs and assigns, forever. Also I give to my well beloved daughter, Rebecca Thomas, the negro woman, at her mother's decease, named Hannah, to her sole use, of her and her heirs and assigns, forever; and I also give her the sole use of one of the rooms of my dwelling, as long as she remains single; also I give to well

beloved daughter Ann Jones, the sum of twenty five pounds money of Kentucky, to be raised out of my estate, to her sole use; and at the death of my beloved wife, all my goods not mentioned shall be equally divided among the above mentioned legatees; and I do hereby utterly disallow, revoke, and disannul, all and every other former testaments, wills, legacies, bequests, and executors, by me in any way before named, will and bequeathed, ratifying and confirming this, and no other, to be my last will and testament. In witness whereof, I have hereto set my hand and seal, this 30th day of August, in the year of our Lord 1794.

his
JAMES —|— THOMAS. [L. S.]
mark.

Signed, sealed, published, pronounced and declared by the said James Thomas, as his last will and testament, in the presence of us, who, in his presence, and in presence of each other, hath hereunto subscribed our names,

JOHN BEGGS.
CONROD AISTER.
ARRINEL AISTER.

Bourbon county, April court, 1797.

This last will and testament of James Thomas, deceased, was proved by the oath of John Beggs, Conrod Arster, and Arnnel Arster, witnesses thereto, and ordered to be recorded; and, on the motion of James Thomas, the executor therein named, who made oath thereto, and together with Conrod Arster, and John Beggs, his securities, entered into and acknowledged bond, in the penalty of £1,200, conditioned agreeably to law, certificate is granted him to obtain a probate thereof in due form.

Attest: THO. ARNOLD, C. B. C.

The above is a true copy of the will of James Thomas, dec'd, from the record in my office. Witness my hand, as clerk of the Bourbon county court, this 4th November, 1828.

THO. P. SMITH,
By JO. T. MILLS, D. C.

[*David Thomas to James Thomas—deed.*]

This indenture, made this first day of December, in the year of our Lord, one thousand seven hundred and ninety-seven, between David Thomas, and Margaret his wife, of the county of Harrison, and State of Kentucky, of the one part, and James Thomas, of the county of Bourbon, and State aforesaid, of the other part, witnesseth, that the said David Thomas, and Margaret his wife, for and in consideration of the sum of ninety-five pounds, specie, to them in hand paid by the said James Thomas, the receipt whereof they do hereby acknowledge, have, and each of them hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said James Thomas, his heirs, or assigns, for ever, all that piece or parcel of land, situate, lying, and being, in the county of Bourbon, being left to the said David Thomas by James Thomas, deceased, containing thirty-

eight acres and a quarter, one third of which is my mother's dower, and bounded as follows: lying on the waters of Townsend's creek, adjoining the lands of Thomas Thomas on the southwest; beginning at a stake, his corner, in David Wilson's line; with his line S. 62, W. 14 poles, to a stake, corner to Rebecca Thomas; with her line S. 41, east 182 poles, to a sugar and buckeye; thence N. 48, E. 56 poles, to a stake, corner to said James Thomas; with his line, S. 56½, E. 183 poles, to the beginning; and all houses and *houses and* appurtenances thereunto belonging, or in anywise appertaining; to have and to hold the said piece and parcel of land and appurtenances to him, the said James Thomas, his heirs and assigns, to the only proper use and behoof of the said James Thomas, his heirs and assigns for ever. And they, the said David Thomas, and Margaret his wife, do further covenant and agree to and with the said James Thomas, his heirs, or assigns, that they, the said David Thomas, and Margaret his wife, will for ever hereafter warrant and defend said piece or parcel of land and premises, my mother's dower excepted, unto the said James Thomas, his heirs and assigns, for ever, against the claims of us, the said David Thomas, and Margaret Thomas, our heirs, executors, or administrators, or any other person or persons claiming by, from, or under him, them, or any of them. In witness wherof, the said David Thomas. and Margaret his wife, hath to this indenture set their hands and seals, the day and year above written.

DAVID THOMAS, [L. S.]
MARGARET THOMAS, [L. S.]

Witnesses present:
SAMUEL TAYLOR,
her
SARAH + TAYLOR,
mark.
REBECCA THOMAS,
her
MARY + CLUGH.
mark.

Bourbon county, April court, 1798.

This deed of bargain and sale, from David Thomas to James Thomas, was proved by the oaths of Samuel Taylor, Sarah Taylor, and Rebecca Thomas, witnesses thereto, and ordered to be recorded.

Test: THO. ARNOLD, C. B. C.

[*Hoy's heirs* vs. *Smith, &c.; record of suit in ejectment.*]

Kentucky, sct.

HOY'S HEIRS, *vs.* NICHOLAS SMITH, &c. } In ejectment.

Pleas at the court house in Paris, in the county of Bourbon, before the honorable judge of the Bourbon circuit court, at the August term, one thousand eight hundred and eighteen.

[*Preamble.*]

Be it remembered, that heretofore, to wit, at a court holden for

the circuit aforesaid, in November, in the year 1817, John Den, on the demise of William Hoy's heirs, by Benjamin Mills, esq., his attorney, filed in this honorable court, his certain declaration in ejectment, against Richard Fen, which, with the notice thereunder written, is in the words and figures following, to wit:

[*Declaration.*]

Bourbon circuit, sct.

John Den, by B. Mills, &c., his attorney, complains of Richard Fen, in custody, &c., of a plea of trespass and ejectment, for this, that on the first day of November, in the year one thousand eight hundred and seventeen, at said circuit, Lawrence Flournoy, and Theodocia his wife, late Theodocia Hoy, Hugh Brown, and Kezia his wife, late Kezia Hoy, John Sappington, and Parthenia his wife, late Parthenia Hoy, Fanny Hoy, William Hoy, Jones Hoy, John Newland, and Celia his wife, late Celia Hoy, severally, to wit, Lawrence Flournoy, and his said wife, by one lease; Hugh Brown, and Keziah his wife, by another lease; John Sappington, and his wife, by a third lease; Fanny Hoy, by a fourth lease; Wm. Hoy, by a fifth lease; Jones Hoy, by a sixth lease; John Newland, and Celia his wife, by a seventh lease; each lease for two thousand acres; demised and leased to the said John Den, each severally, as aforesaid; said two thousand acres, with twenty dwelling houses thereon, ten barns, ten out houses, and one thousand acres of cultivated land, in said circuit, to hold, from the day and year aforesaid, for and during the term of thirty years, to be fully complete and ended; by virtue of which said demise, the said John Den entered into the demised premises, with the appurtenances; and, being so entered, was thereof peaceably possessed, till afterwards, to wit, on the 15th day of November, in the year aforesaid, he the said Richard Fen, with force and arms, entered into the said demised premises, with the appurtenances, and him the said John Denn drove out and expelled therefrom, the said term of the said John Denn being then and not yet ended, and other wrongs to the said John Denn then and there did, against the peace and dignity of the commonwealth, and to the damage of the plaintiff one hundred dollars; and, therefore, he sues, &c.,

(Signed,) WARFIELD & B. MILLS, p. q.

[*Notice.*]

Messrs. John Evalt, Jacob Smelser, John Smelser, Jacob Smith, Nicholas Smith, sr., and Nicholas Smith, jr.:

Being informed that you are in possession of, or claim title to, the premises in the declaration mentioned, or some part thereof, and I being sued in this action, as casual ejector, and having no title thereto, do advise you to appear, on the 16th day of the present November term of the Bourbon circuit court, at the court house, in Paris, and by some attorney, under a rule of said court, to cause yourselves to be made defendants therein in my stead; otherwise I shall suffer judgment to go against me by default, and you will be turned out of possession.

Your friend,

(Signed.) RICHARD FEN.

[*Sheriff's return.*]

On which the sheriff made the following return, to wit:

Received, and a copy of the within declaration in ejectment delivered to John Evalt, Jacob Smeltser, John Smeltser, senr., Jacob Smith, senr., and Nicholas Smith, jr., the 24th day of November, 1817.

For JOS. L. STEPHENS, S. B. C.,
JAS. S. HUTCHISON, D. S.

[*Com. order.*]

And thereupon came the plaintiff, by his attorney, and it appearing, from the return of James S. Hutchison, a deputy sheriff of this county, that John Evalt, Jacob Smeltser, John Smeltser, sr., Jacob Smith, Nicholas Smith, sr., and Nicholas Smith, jr., tenants in possession of the premises, have been duly served with a copy of the plaintiff's declaration, and notice thereunder written, and they not appearing, though solemnly called, it is ordered, that unless, they having legal notice of this order, or those under whom they claim, that some or one of them do appear here, at our next term, and make himself, herself, or themselves, a defendant or defendants herein, in the room of the said Fenn, plead the general issue confess the lease, entry and ouster, in the declaration supposed, and agree to insist upon the title only at the trial, judgment shall be given for the plaintiff, and the commonwealth's writ of *haberi facias possessionem* awarded; and, on motion of the plaintiff, by

[*Order of survey.*]

his attorney, it is ordered, that the surveyor of this county do go upon the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same, as either party may require, having due regard therein to the interest of both parties, state all matters of fact specially, and return four fair plats and reports thereof to the clerk's office, and the cause is continued till the next term.

[*Judgment by default.*]

And afterwards, to wit, at a court holden for the circuit aforesaid, in May, in the year 1818, came the plaintiff, by his attorney, and Nicholas Smith, sr., Nicholas Smith, jr., John Evalt, Jacob Smeltser, John Smeltser, senr., and Jacob Smith, tenants in possession of the premises, having been duly served with a copy of the common order herein, and not appearing pursuant thereto, nor any person under whom they claim; therefore, it is considered by the court, that the plaintiff recover against the said defendants, his term yet to come of and in the premises, with the appurtenances in the declaration mentioned: whereupon, the plaintiff prays the writ of *haberi facias possessionem;* and to him it is granted, returnable here, &c.

[*Judgment by default set aside; defendants made rule, &c.*]

And afterwards, to wit, at a subsequent day of the term, on motion of Nicholas Smith, sr. Nicholas Smith, jr. John Evalt, Jacob Smeltser, John Smeltser, sr. and Jacob Smith, and for reasons appearing

to the court, it is ordered that the judgment by default entered herein at the present term, be set aside. And thereupon, on motion of Nicholas Smith, sen. Nicholas Smith jr. John Evalt, Jacob Smeltser, John Smeltser, senr. and Jacob Smith, they are admitted herein, in the room of the said Fenn, who thereupon entered into the common rule, confess the lease, entry and ouster in the declaration supposed, and agree to insist upon the title only at the trial; and it is ordered that if on the trial of the issue, the said defendants shall not confess the lease, entry and actual expulsion, whereby the plaintiff shall not be able to prosecute his suit any further against them, that then no costs and charges shall be taxed on such non pros. but that then the said defendants, shall pay to the plaintiff the costs and charges therein to be taxed. And it is further ordered, that if on the trial of the issue, a verdict shall be given for the defendants, or if it shall so happen that the plaintiffs shall not further prosecute his suit against said defendants for any other cause than for not confessing the lease, entry and ouster aforesaid, that then the lessor of the plaintiffs shall pay to the defendants the costs and charges thereon to be taxed. And thereupon, the said defendants by their attorney come and defend the wrong and injury, when, &c. and say they are not guilty in manner and form as the plaintiffs against them hath declared, and of this they put themselves upon the country, and the lessors of the plaintiff, and the trial of the issue is deferred until the next term.

[*Jury. Subpoena duces tecum.*]

And now at this time, to wit, on the day and year first above mentioned, came the parties aforesaid, by their attorneys, and thereupon came also a jury, to wit: John Currant, Littleberry Bedford, Solomon Spears, Humphrey Davis, Thomas R. Bowles, Joseph Galloway, Paris Howard, Anselm Watkins, James M. Cropper, William M. Parmer, George Breckenridge and Aquilla Talbot, who being elected, tried and sworn upon the issue joined, and there not being time to go through with the trial, by consent of parties, and with the assent of the court, the jury are adjourned, and the cause continued until to-morrow. And on motion of the defendants, a subpoena duces tecum is awarded them, directed to the clerk of the county court of this county, to produce into this court the record book of deeds in which is recorded a deed from William Flournoy to Stephen Trabue; also a deed from said Trabue to James Thomas, and from said Trabue to John Jones, and from said Jones to Nicholas Smith; and also a deed from James Thomas to John Evault, returnable instanter.

And afterwards, to wit: On the subsequent day of the term, the jury sworn and empannelled herein on yesterday, this day appeared and took their seats, and having heard the evidence upon their oath, returned the following verdict, to wit: "We of the jury find the defendants, Jacob Smeltser, John Smeltser, senr., Jacob Smith and Nicholas Smith, jr. guilty of the trespass and ejectment, in the declaration mentioned, and we find the defendant, Nicholas Smith, in like manner guilty as to all his possession except two undivided sevenths of fifty acres conveyed

to him by John Jones, and the defendant John Evault guilty as to all his possession, except two undivided seventhes. And we assess the plaintiff's damages to one cent. Therefore, it is considered by the court, that the plaintiff recover against the said defendants, his term yet to come of, and in the messuages and lands with the appurtenances in the verdict of the jury aforesaid mentioned, together with the damages by them in the form aforesaid assessed, and also his costs by him about his suit in this behalf expended, and the said defendant, in mercy, &c.

[*Judgment amended.*]

And afterwards, to wit, on a subsequent day of the term, ordered that the judgment entered herein on yesterday, be amended in the following words, to wit: Therefore, it is considered by the court, that the said plaintiff recover against the said defendants, Jacob Smeltzer, John Smeltser, sen. Jacob Smith, and Nicholas Smith, jr. his term yet to come of, in, and to the lands and tenements, with the appurtenances in the declaration mentioned, and recover against the said Nicholas Smith in like manner, his term yet to come of and in the lands, and tenements with the appurtenances in the declaration mentioned, except two undivided sevenths of fifty acres, conveyed to him by John Jones, and that the said plaintiff do in like manner, recover against the said defendant, John Evault, all the lands and tenements with the appurtenances in his possession in the declaration mentioned, except two undivided sevenths, together with the damages aforesaid by the jurors aforesaid in their verdict assessed; and also his costs by him about his suit in this behalf expended, and the said defendants may be taken, &c.

And afterwards, to wit, on a subsequent day of the term, on motion of the defendants by their attorney, it is ordered that James Ganard, John Edwards, George Northcot, Andrew Boston, Solomon Spears, George A. Smith, and William Stamps, who, or any five of them, be appointed commissioners herein, under the occupying claimant law, and that they report to court.

Bourbon circuit, sct.

I, Thomas Arnold, clerk of the court, for the circuit aforesaid, do certify that the foregoing seven pages does contain a full, true and perfect transcript of the record and proceedings, had in a certain action of ejectment, lately decided in the said court, between the parties therein named as fully and wholly as the same remains in my office, certified under my hand and seal, this 23d day of November, 1824.

THO. ARNOLD, [L. S.]

[*Affidavit to set aside judgment by default.*]

John Den on demise Hoy's heirs }
vs.
Nicholas Smith, &c. }

The affidavit of Nicholas Smith and Jacob Smeltser, taken to be read on a motion to set aside a judgment taken by default at the present May term in the above suit: These affiants state, that they had no expectation that William Chiles would have prose-

cuted this suit to judgment against them, in as much as they had purchased from said Chiles the title of Hoy's heirs for the sum of six thousand dollars, nine hundred of which said sum has been paid to the said Chiles; they state, that the balance is not yet due. Your affiants state, that they hold Chiles' bond to convey to them Hoy's title, and that when the compromise was made, that the suit was not to be prosecuted any further. They state, that they are informed, that Chiles has not the title complete from Hoy's heirs; they state, that from the notice which they received, it did not direct them what day of the term to appear and make themselves defendants; they therefore concluded, that the whole term was included for their defence. Your affiants state, they are surprised that judgment should be taken against them by default, as they fully calculate on a deed for the land according to the compromise instead of a judgment against them. They state, that if the judgment is opened, they have a good substantial defence to make against the claim of Hoy's heirs, the title papers for which defence they cannot now produce, in as much as they are in the hands of said Chiles; they state that they purchased six hundred acres of said Chiles, and that all the other defendants except Evault, is included in the purchase; they therefore pray, that the judgment may be opened, and they permitted to make defence.

Bourbon circuit, sct. May term 1818, sworn to in open court.
Attest: JAMES ARNOLD, D. C.
A copy. Attest: THO. ARNOLD, C. B. C. C.

Boone's Heirs
vs.
Smeltser, Chiles, &c.

[*Admission of Boone's heirs.*]

It is admitted in this cause, that Thomas Boone, the original complainant, was in the now State of Kentucky, in the year 1819.

BOONE INGLES,
for Boone's heirs.

[*John Smelser and wife* vs. *Chiles and others. Copy, bill.*]

To the honorable the circuit court of Bourbon, in chancery sitting: Your orator and oratrix, John and Anna Maria Smelser, humbly complaining, would respectfully show, that they intermarried on or about the day of , in the year of ; that the said Anna Maria, now the wife of said John, is one of the children and heirs at law of Peter Smelser, deceased; that before the death of said Peter, he made his last will and testament, leaving to all his children his estate, to be divided so as to make them equal, share and share alike, except that in his will he did not design or provide that the property should be devised in kind, but provided that the land should be valued, giving to your oratrix Anna Maria and her two brothers, John and Jacob, the choice and right to have the lands which the said Peter then held upon the waters of Stoner, in Bourbon county, which he resided upon as his home place at his death; that said tract of land contained between five and six hundred acres, and is the same as

described in the will to have been purchased by said Peter from John South, Walter Carr and John Glover, and, also, from Samuel McMillin; that by the provisions of the will, after said tract of land was valued, they were to have three years to pay the money in, if above their shares; that it is also provided in the will, that Barbara Smelser, wife of said Peter, should be entitled to the entire use of said tract of land until Jacob, the younger son, should become of age, at which time it should be divided among the aforesaid three, Anna Maria, John and Jacob, reserving to his widow the use of the farm and improvements during her life; they charge that they have elected to take the said tract of land, that after the said Jacob became of age, the land was valued, and that your orator and oratrix, and John and Jacob, have paid to the other devisees, the amount of the valuation, being upwards of £500; that the residue of the estate has been divided amongst the other children; they charge that the estate thus stood for many years; that of late a certain Wm. Chiles went to the house of a certain Peter Smith, who intermarried with one of said Peter Smelser's children; that the said Chiles represented to the said Peter Smith that he, said Chiles, had the legal title of said land from Hoy's heirs, all except one, who was idiot, which South, Carr, and Glover's bond covered, and that the land was worth nothing, and that no title ever could be made upon it, but that if he could get the bond, and let him, Chiles, have it, that he would sell the land for ten dollars per acre to him, and those that resided upon it; that the said Peter Smith not knowing but all that said Chiles told him was true, and that in fact, he had the title of Hoy's heirs, undertook to obtain the bond from said Barbara Smelser, the widow and executrix of said Peter, deceased; that the said Barbara handed the bond to said Peter Smith innocently, as your complainants believe, without either making sale of it, or intending a sale, but forbid the bond to be disposed of in any way whatever; that the said Smith, under again full assurance from said Chiles, that he had Hoy's title, and could make it as soon as he could ride home, which was only the distance of about thirty miles, or at least that he would in a few days send the title down, or complete it; upon these representations, and the said Chiles' positive assurance that Hoy's heirs had the whole of them, except as before stated, made said Chiles a full and complete title to said land; the said Peter Smith gave up to said Chiles the bond upon South, Carr, and Glover; they charge that said Chiles and Smith then made a contract under the fraudulent representations aforesaid; that the said Peter should pay him ten dollars per acre for all the lands said Peter held; that at the same time the said Chiles thus obtained said bond upon South, Glover and Carr, he also made the same representations to Jacob Smeltser, and obtained his consent with a contract for said bond for $10 per acre, for all that he held in said bond, and as they are informed at the same time under the same representations obtained a bond of Nicholas Smith for 200 acres, upon South, for a part of Hoy's claim. That said Chiles, so far from having the title of Hoy's heirs as he then represented, in fact had not said title as he then represented, but well knowing how the title could be obtained, provided he could obtain the bonds aforesaid, fraudulently con-

cealed the true situation, and as soon as he obtained said bond, went immediately to Benjamin South, one of the relations of said John South, the said John having departed this life, and gave up said bonds to said South, and obtained from him a bond executed by Reuben Searcy to Wm. Hoy, and by Hoy assigned to George Boone, and by George Boone assigned to Thomas Boone, and from him to John South, which bonds your complainants will hereinafter more fully speak of; said land having been entered in the name of said Searcy, but patented in the name of Hoy, and that so far from said Chiles having the title of Hoy's heirs, as he represented, that as soon as he had obtained the bond of Searcy upon Hoy, he immediately commenced suit in this honorable court against said Hoy's heirs for the title, a copy of the record and proceedings of which is prayed to be made a part of this bill. Your orator John would further state, that he had sold, after his intermarriage with the said Anna Maria, a part of the land to Jacob Smelser, not knowing but that he was entitled to the land in his own right, by virtue of the marriage, but that his co-defendant Anna Maria, did not consent or enter into the sale; that he executed his bond to said Jacob for said land; that after said Chiles obtained the bond as aforesaid, the said Chiles, by an arrangement with the said Jacob, commenced an ejectment in the name of Hoy's heirs, against said Jacob, &c., in this honorable court, and obtained a judgment for the land, the said Chiles having sold it to the said Jacob, that said Jacob, after the judgment was obtained, commenced suit against your orator upon his bond for a title to the land, and recovered judgment thereon, which judgment, amounting to the sum of $, your orator John has paid back with interest unto the said Jacob; the record and proceedings of both of which suits he prays may also be made a part of this bill. They further charge that said Chiles prosecuted said ejectment in the name of Hoy's heirs, without their knowledge or consent, which fact was unknown to your complainants at the time, and they have not until late discovered it, but which they are now informed was well known to the said Jacob. Your orator and oratrix would state, that at the time said Chiles took up Searcy's bond from said South, he caused, or had the assignment from Boone to South crossed out, which could only have been done to prevent a discovery on the part of the Smelser's; that he, said Chiles, was in fact obtaining the title from Hoy's heirs by virtue of the bonds which said Smith's had let him have, instead of his having said title, or otherwise being entitled to it, as he had before represented; they further charge that, by an indorsement made upon the record in the suit of Chiles, &c. *vs.* Hoy, it appears that said Chiles obtained leave to withdraw a copy of said bond; that the clerk, although the assignments thus crossed was plain, did not copy it, and that said bond has never been seen since; but they expressly charge that the assignment to South from Boone was genuine, will, they believe, they will be fully able to prove, and they here call upon the said Chiles to state where said bond is, and produce it, and who crossed out the assignment, and also upon said Boone to state upon oath whether the assignment was not made upon said bond; they also call upon said Chiles to produce the bond from South, Carr, and Glover, to

Smelser, and if not in his possession, to state what he done with it, an attested copy of which is here annexed as a part of this bill marked A, that he may also disclose and state whether it is a correct copy or not. They also charge that said Chiles has in his possession, or if not in his possession, he had, and seen, and knows to be genuine, a power of attorney from George to Thomas Boone, or from Thomas to George Boone, which authorizes some of the assignments on said Searcy's bond, and they call upon him particularly to produce it, if he has it, and if he knows where it is, what is its contents, and whether he did not use it as one of the vouchers showing the right of South to the bond at the time he obtained from said South, Searcy's bond, and gave up South's, Carr's, and Glover's bond. They further charge that he gave nothing for said South's, Carr's, and Glover's bond, and they now call upon him to state, if he did give any thing, what it was? They further charge, that a certain Benjamin Mills, they are informed, and believe, have an interest in said land with said Chiles, or contingent, either in money or land, as he may choose, but of this fact they have no positive proof, and call on said Chiles and Mills to state, what is the situation of the land as to their claims? they charge that Jacob Smelser has disposed of, by sale, without any recourse, a considerable part of said land, being acres, and that said Jacob holds and resides upon the balance, so that your orator and oratrix have no part of it, at this time, in their possession or enjoyment, which is not right, they being equally entitled; also, that said Jacob sold said land to a certain Joseph Cummins, who was well acquainted with the whole circumstances, as to the right of the said Jacob, and how far he was in equity bound to your oratrix Anna Maria and said John, for equal proportions of said land, which was undivided. They further charge that one hundred acres of said home tract as purchased by said Peter, deceased, from said McMillin, is free from dispute, which, on any division to be made between the said John, Jacob, and your oratrix Anna Maria, they pray to be taken into calculation. Your complainants state that, the said Peter Smelser, deceased, left as his devisees and heirs at law the following children: Peter Smelser, Barbara Dovenspeek, late Barbara Smelser, who intermarried with Philip Dovenspeek, that the said Barbara and Philip have both departed this life, leaving the following as their children: John, Jacob, Peter, Mary, Catharine, Betsey, Barbara, and Polly, who has intermarried with Isaac Harlen. Also, John Smelser, Jacob Smelser, Catharine, who intermarried with Malachi Couchman, that the said Malachi and Catharine have both departed this life, and have left the following children: Peter, Benjamin, Catharine, who intermarried with Lloyd Rollins, John and Andrew Couchman, Margaret, who intermarried with Peter Smith, late Margaret Smelser, Mary Eve, who intermarried with Adam Smelser, Elizabeth Eve, who intermarried with William Thomson; that the said Elizabeth Eve has departed this life, leaving one child, an infant, her only heir, called Thomson, the whole of whom are prayed to be made defendants to this bill; that the said Barbara Smelser, wife of said Peter, deceased, is still living, who is also made a defendant to their bill. They charge that the said William Hoy, at his death, left the following as his

children and devisees: Kesiah, who intermarried with Hugh Brown, Jones Hoy, William Hoy, Fanny Hoy, Elizabeth, who intermarried with John South, that the said South has departed this life, Theodocia, who intermarried with Lawrence Flournoy, late Theodocia Hoy, Celia, who intermarried with John Newlin, Parthenia Hoy, who intermarried with John Sappington, the said Fanny, a lunatic, and Hugh Brown, her committee, who they also pray may be made defendants to this bill; that the heirs of said John South are unknown, they pray them to be made defendants also; they also pray that William Chiles, George Boone, Thomas Boone, Joseph Cummins, Reuben Searcy, Walter Carr, and John Glover may be made defendants to this bill, and that the whole of said defendants may be compelled to answer all and singular the allegations of this bill, touching the several matters wherewith they are charged, as fully and completely as if here again repeated in the form of interrogatories, and that the said William Chiles may more especially as before in this bill required, answer and say whether he did not get from Peter Smith the bond upon South, Carr, and Glover, to said Peter, deceased, and what he done with it? what was its contents? and what he gave for it? and what he got for it? when he parted with it? and who now has it? The whole considered, your orator and oratrix pray that inasmuch as they are without remedy at law, and only relievable in equity, where all manner of fraud, hardship, mistake, and oppression are only properly relievable, that the honorable court will decree, that said Chiles' and Hoy's heirs may be compelled to convey to your oratrix, Anna Maria, and John and Jacob, the legal title to the said land, according to the metes and bounds, as called for in said South's, Carr's, and Glover's bond, and that your honor also will decree a division of said land, including McMillin's conveyance to said Peter, to be made equal in quantity and quality, between your orator and oratrix, Anna Maria, John and Jacob, this done consistent with the rules of equity, they pray such other and further relief as their case may require, and to equity belongs, and your oratrix and orator will ever pray, &c.

GEO. W. BAYLOR.

A copy. Attest: THO. ARNOLD, C. B. C. C.

[*Will of George Boone.*]

In the name of God, amen: I, George Boone, of Exeter, in ye county of Berks, and province of Pennsylvania, Esq., being sick and weak of body, but sound mind and memory, thanks be given unto Almighty God, therefore do make this my last will and testament in form and manner as follows: In the first place, my will and desire is, that all my just debts be all honestly paid, and the remainder and residue of my estate to be divided among my beloved wife and children, in the following manner, viz. I give and bequeath unto my beloved son William, all that part of my lands and livings lying on the south side of the Tulpahocan wagon road, belonging and appertaining to the old plantation in Exeter, and also one-half part of all the mills and water works, now on any part of said premises; to have and to hold the same unto him, his heirs and assigns forever.

2dly. I give and bequeath unto my son Hezekiah, all that part of ye said old plantation, lying and being on ye north side of the said Tulpahocan road, and the other half part of all the mills and water works thereunto belonging; to hold to him, his heirs and assigns, forever.

3dly. I give and bequeath unto my beloved son Josiah, ye saw mill in Robinson township, in Berks aforesaid, together with all the lands, rights and privileges, thereunto belonging; to have and to hold the same to him, his heirs and assigns, forever.

4thly. I give and bequeath unto my son Jeremiah, all that plantation and parcel of land called Andrew Sanduskie's, situate in Amity township; to have and to hold the same to him, his heirs and assigns, forever.

5thly. I give and bequeath unto my three daughters, viz. Mary, Deborah and Dinah, to each and every of them, the just sum of fifty pounds, current lawful money of Pennsylvania, the same to be paid to them or their heirs, within the space of three years next after my decease.

6thly. I give and bequeath unto my two little grand children, (viz.) George and Jane Hughes, ye issue of my deceased daughter, Hannah, the sum of twenty-five pounds to be paid to each of them, when they arrive to their proper ages, and if either of them do not live *till* their proper ages, then ye same to go and be paid to ye survivor of them.

7thly. I give and bequeath unto my beloved wife, the sum of twelve pounds to be paid unto her yearly, and every year during her life, the same to be paid unto her by my sons William and Josiah, and also ye liberty of the use of ye *best* room in the old house, where she has had her residence ye chief*est* part of ye time, since it pleased God to couple us together; likewise, it is my will and desire, that my son William, keep a riding horse and milch cow for her, and find her as much fire wood as is necessary for her summer and winter, during her natural life; also, some necessary household goods, &c. I do hereby nominate and appoint my four beloved sons, viz. William, Josiah, Jeremiah and Hezekiah, executors to this my last will and testament, empowering them to make sale of my lands, all such as is my own and other lands in partnership with Richard Peters, gentleman; together with all my stock, moveable and unmoveable, in order to pay my just debts and the legacies: hereby empowering them, or any two of them, to act, do and perform, this my will and testament; and after paying all just debts, legacies, &c., they, my said executors, to pay all mortgages due, or becoming due on any of my lands, each and every of them to pay a moiety thereunto according to the estates they hold, if so be there is not sufficient without.

GEO. BOON. [SEAL.]

Signed, sealed, published, pronounced and declared to be my last will and testament, the 18th day of ye 11th month, 1753. In presence of us, the subscribers.

JOSEPH BOONE,
JOHN HUGHES,
EDWARD DRURY,
EDWARD HUGHES.

Reading in Berks county, December 24th, 1753.

Then appeared in their proper person, Joseph Boone, John Hughes, Edward Drury and Edward Hughes, witnesses to the within will, and the said Edward Drury, upon his solemn oath upon the holy evangelist of Almighty God, and the said Joseph Boone, John Hughes and Edward Hughes, upon their solemn affirmation, respectively, did severally declare and affirm, that they saw and heard George Boone, the testator within named, sign, seal, publish and declare the same will to be his last will and testament, and at the time of doing thereof, he was of sound mind, memory and understanding, to the best of their knowledge and belief, and that they did subscribe their names respectively, as witnesses thereto, at the same time in the presence, and at the request of the said George Boon, the testator.

Coram. JAMES READ, *D. Regr.*

State of Pennsylvania, Berks county, ss.

I do hereby certify, that the foregoing doth contain a true copy of the original will of George Boone, deceased, which is duly proven, and remains filed of record in the register's office, in and for the county of Berks, aforesaid.

In testimony whereof, I have hereto set my hand
[L. S.] and affixed the seal of said office, at Reading, this 1st day of Sept'r. A. D., 1831.

GEO. SMITH, *Reg'r.*

[*Hoy's bond from Searcy.*]

Know all men by these presents, that I, Reuben Searcy, of the county of Fayette, am held and firmly bound unto William Hoy, of the county of Lincoln, and State of Virginia, in the penal sum of fifty thousand pounds current money of Virginia, to which payment well and truly to be made, I bind myself, my heirs, executors and administrators unto the said William Hoy, his heirs, or assigns, this 24th day of September, 1781. The condition of the above is such, that if the above bound Reuben Searcy shall well and truly make, or cause to be made as soon as deeds *is* made to land in this country in general, a good and sufficient deed for seven hundred acres of first rate land lying in Fayette county, on Licking creek, between John Martin's station, and Riddle's station, it being a part of a settlement and pre-emption, that John Martin cleared out on the halves for said Reuben Searcy, and the said Hoy, takes his first choice of the land, then the above obligation to be void; otherwise, to remain and be in full force, power and virtue.

his
REUBEN + SEARCY. [SEAL.]
mark.

Signed, sealed, and delivered in the presence of us—
JESSE CARTRIGHT,
CALEB CALLOWAY.

A COPY.

I, William Hoy, assign over the within bond, unto George Boone, his heirs, or assigns, and said Hoy obliges himself, his heirs, executors and administrators, as shurety to the within bond;

and if the within lands cannot be obtained by reason of a prior claim, then, and in that case, seven hundred acres equal in quality and convenience, shall discharge the within bond. Witness my hand this fifteenth day of December, 1781.

Test: WM. HOY.

JOHN TANNER,
NATH'L HART.

I do hereby assign over all my right, title, and claim of the within bond unto Thomas Boone, his heirs, or assigns, without recourse to the same, that is to say, that I, the said George Boone, am no ways obligated if the said William Hoy, or his heirs, be sufficient to make good the within bond; but, if the said William Hoy, or his heirs, should not be able, then I, George Boone, do bind myself, my heirs, to make good the same unto the said Thomas Boone, or his heirs, or assigns. Witness my hand this 30th day of April, 1786.

Test: GEORGE BOON.

WILLIAM HUNTER.

For value received, I assign the within bond to John South, without recourse to me for the same. August 6th, 1792.

GEORGE BOON,
as Atty. in fact for
THOMAS BOON.

JESSE COPHEN,
DAVID WILLOCK.

[*N. Smith's will.*]

In the name of God, amen: I, Nicholas Smith, of Bourbon county, State of Kentucky, being weak in body, but of sound mind and disposing memory, for which I thank God; and calling to mind the uncertainty of human life, and being desirous to dispose of all such worldly estate, as it hath pleased God to bless me with, I give and bequeath the same in the following manner; that is to say—

1st. I give unto my son Jacob Smith, two negro boys, one named Tom, about eighteen or nineteen years of age, the other named Jim, about the same age; also, one hundred acres of land, out of that I purchased of Jacob Swope, beginning on Smelser's line, then running down Stoner, including a spring known by McMillin's spring, for quantity; which land is now in dispute. Should the said land be lost, he is not entitled to any part of my other lands; also, the stock of horses, cattle, sheep and hogs. I have heretofore given him, to him and his heirs forever, the above mentioned boy, Tom, he had in his possession, and sold to John Shawhan, for which I have given a bill of sale; the other he now has in his possession.

2dly. I give unto my son Nicholas Smith, and his heirs forever, all the remainder of my estate, both real and personal, of every description.

3dly. I conceive I have given my three children, Peter Smith, Joseph Smith, and Elizabeth Smeltser, wife of Jacob Smeltzer, what is fully equal to the share I intend for them. I therefore,

devise and direct, that they shall have no more of the estate I may have at my death.

Lastly. I do hereby constitute and appoint my son Nicholas Smith, executor of this my last will and testament; hereby revoking all other, or former wills by me heretofore made. In witness whereof, I have hereunto set my hand and seal, this 8th day of February, 1826.

NICHOLAS SMITH. [L. S.]

Acknowledged and signed in presence of us—
WILLIAM HUTCHESON,
JOHN SHAWHAN.

Bourbon county court, May term, 1826.

The last will and testament of Nicholas Smith, deceased, was produced into court, and proved by the oath of William Hutchison and John Shawhan, witnesses thereto, and ordered to be recorded. Attest:

THO. P. SMITH, C. B. C.
by JOS. T. MILLS, D. C.

Bourbon county court. I, Thomas P. Smith, clerk of the county court aforesaid, do certify, that this last will and testament of Nicholas Smith, deceased, is truly copied from the record in my office. Witness my hand, this 28th day of November, 1826.

THO. P. SMITH, C. B. C.
by JOSEPH T. MILLS, D. C.

[*Bond of John South to George Pope.*]

Know all men by these presents, that I, John South, of the county of Fayette, and State of Kentucky, am held, and firmly bound unto George Pope, of the county of Lincoln, and State aforesaid, in the full sum of five hundred pounds lawful money, of Kentucky, to be paid unto the said George Pope, his heirs, executors, and administrators. I bind myself, my heirs, executors, and administrators firmly by these presents. Sealed with my seal, and dated this 26th day of August, 1794.

The condition of the above obligation is such, that whereas, the said John South, shall make, or cause to be made, a good and lawful deed of general warrantee unto two hundred acres of land, unto the said George Pope, his heirs, &c.: the said deed to be made and executed as soon as the youngest heir of William Hoy, deceased, shall come of full age, the same being a part of a settlement and pre-emption granted unto Reuben Searcy, and to be laid off to adjoin the line of a certain Smelser, and to include a spring, called McMillin's spring, and to extend down the river, and from thence back to the line to include the quantity; then the above obligation to be void, otherwise to be and remain in full force and virtue in law.

JOHN SOUTH, [L. S.]

Signed, sealed, and delivered in presence of
Test:
B. SWOPE,
CHRISTOPHER HOMER.

I assign over the within bond, unto Jacob Swope, for value received of him. As witness my hand, this 6th day of January, 1795. GEORGE POPE.

Test:
his
GEO. + HARLEN,
mark.
COSPE POPE.

I hereby, assign over all my right, title, interest and claim of the within bond, unto Nicholas Smith, this twenty-eighth day of November, 1797. JACOB SWOPE.

Test:
SAML. SWON,
her
NANCY + SWON.
mark.

[*Bond of South, Carr and Glover, to Smeltser.*]

Know all men by these presents, that we, John South, Walter Carr, and John Glover, all of Fayette county, and district of Kentucky, of the State of Virginia, are held and jointly bound, unto Peter Smeltzer, of Bourbon county, of the same State aforesaid, in the just and full sum of one thousand pounds, lawful money of Virginia, to be paid unto the said Peter Smeltzer, his heirs, executors, and administrators or assigns, to which payment, well and truly to be made and done, we bind ourselves, and each of our heirs, executors, administrators and assigns, jointly and separately, firmly, by these presents, sealed with our seals, and dated this 23d day of December, 1791.

The condition of the above obligation is such, that if the above bound John South, Walter Carr, and John Glover, their executors, administrators, or assigns, or some of them, do well and truly make over unto the said Peter Smelser, his heirs, executors, administrators, or assigns, the just and full sum of four hundred acres of land, it being part of a settlement and pre-emption that was granted unto William Hoy, assignee of Reuben Searcy, the land lying in Bourbon county, on Stoner's fork of Licking, about two miles from Ruddell's mill, and beginning for the settlement three hundred poles west of Stoner, at a buckeye corner to Samuel McMullen's, and running north 88½°, east 432 poles, crossing Stoner below the mouth of Flat run, to a double cherry tree, hickory, and box elder, in McMullen's line, and George Ruddell's pre-emption line; thence north 26°, west 136 poles to a honey locust; thence west 66 poles to a mulberry, on the bank of Stoner in said settlement; thence up the creek north 60°, west 40 poles to a stake edge of the creek; thence south 85, west 20 poles to a stake edge of the creek; thence south 70°, west 67 poles to a stake edge of the creek, and almost opposite a spring, called McMullin's spring, on the other side of the creek; thence west, crossing the creek, and running 48 1-3 poles to two hickories; thence north one hundred poles to two box elders; thence west 139 2-3 poles to a blue ash hickory and buckeye; thence south 225 poles to the first beginning; it being a part of a settlement and pre-emption as above mentioned, for four hundred acres of land,

together with all its appurtenances thereunto belonging, with a sufficient general warrantee deed of conveyance, in fee simple, and will warrant and forever defend the aforesaid parcels of land and improvements, from all manner of person or persons whatsoever holding claims thereto, unto the said Peter Smeltzer, his heirs, executors, administrators, and assigns forever, in fee simple, the said deed to be made as above, as soon as the heirs of William Hoy comes of age; then the above obligation to be void and of none effect, else to be and remain in full force and virtue in law.

JOHN SOUTH, [L. S.]
WALTER CARR, [L. S.]
JOHN GLOVER, [L. S.]

Signed, sealed, and delivered, in presence of—
THOMAS HALL,
his
ZACHA × NATT,
mark
his
JAMES + CARNIEL,
mark

March Court, 1792.

This bond from South, Carr and Glover, to Smeltzer, was proved by Thomas Hall, and ordered to be recorded.

JOHN EDWARDS, *Clk.*

Bourbon county, sct.

I, Thomas P. Smith, clerk of the court, for the county aforesaid, do certify, that the foregoing bond from John South, Walter Carr and John Glover, to Peter Smeltser, is truly copied from the record, in my office.

Witness my hand, this 16th day of August, 1824.

THO. P. SMITH,
By A. Chs. Dickerson, D. C.

[*Jones to Smith. Deed.*]

This indenture, made the thirteenth day of December, in the year of our Lord, one thousand seven hundred and ninety-seven, between John Jones and Ann his wife, of Bourbon county, and State of Kentucky, of the one part, and Nicholas Smith of the county and State aforesaid, of the other part, witnesseth, that for and in consideration of the sum of one hundred and twenty-five pounds, by the said Nicholas Smith to the said John Jones and Ann his wife, in hand paid; the receipt whereof is hereby acknowledged, they, the said Jones and Ann his wife, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Nicholas Smith, his heirs and assigns, a certain tract or parcel of land, lying and being on the south Fork of Licking, in the county of Bourbon aforesaid, adjoining James Thomas on the southwest, and David Wilson on the southeast; beginning at a sugar tree, corner to said Wilson, on the bank of said creek; then with his line south sixty-two degrees, west thirty-three poles to a buckeye and ash corner to said Thomas, then

with his line south forty degrees, east one hundred and twenty poles to a locust, ash and hickory; thence north 31°, east one hundred and fifty-two poles to a hickory and sugar trees, corner to George Ruddell's settlement, on the bank of the creek; then running down the same, with the meanders thereof, to the beginning; containing by survey fifty acres. To have and to hold the aforesaid land, with the appurtenances, and all right and privileges and improvements to the same, or in any wise belonging to him the said Jones and Ann his wife; that they the said Nicholas Smith, his heirs and assigns, shall and may, forever hereafter, peaceably and quietly have, hold, and occupy, and possess and enjoy the afore granted land and premises, without the let or molestation of any person whatsoever, and free and clear from all manner of incumbrances whatsoever; and the said John Jones and Ann his wife, doth for themselves, their heirs, executors, and administrators, warrant and forever defend the aforesaid land and premises, according to our article of agreement, left in Isaac Ruddell's care, to him the said Nicholas Smith, his heirs, and assigns forever, against the claim or claims of all manner of person or persons whatsoever. In testimony whereof, we have hereunto set our hands and affixed our seals, the day and year first above written.

JOHN JONES, [L. S.]
ANN JONES, [L. S.]

Signed, sealed, and delivered, in presence of us—

Bourbon county. January Court, 1798.

This deed of bargain and sale, from John Jones and Ann his wife, to Nicholas Smith, was acknowledged in open court, by the said John and Ann, she having been first privately examined, as the law directs, voluntarily relinquished her right of dower herein, and ordered to be recorded.

Test:

THO. ARNOLD, C. B. C.

[*Thomas Boone to power of attorney; George Boone.*]

Know all men, by these presents, that I, Thomas Boone, of Oly township, in the county of Berks, and commonwealth of Pennsylvania, blacksmith, for divers good causes, me hereunto moving, hath constituted and appointed, and by these presents do constitute and appoint my trusty friend, George Boone, of Madison county, in settlement of Kentucky, and commonwealth of Virginia, yeoman, my true and lawful attorney, *for me and in my name, and to my use, to ask, demand, sue for and recover of and from Major Wm. Hoy, of Kentucky settlement, a deed or other lawful conveyance, valid in law for seven hundred acres of land, in or near the waters of Hinkson and Stoner, branches of Licking river;* it being one half or moiety of a settlement and pre-emption right, belonging to a certain Reuben Searcy, and which I purchased from Squire Boone, who purchased the same from said George Boone, who purchased the same from said William Hoy, *hereby giving and granting my sole power and authority to my*

said attorney concerning the premises, to do or cause to be done therein, as amply as I myself might or could do were I personally present; and on the obtaining said title and conveyance for me, and in my name, sufficient discharges to sign, seal, and deliver, and one or more attorneys or attornies under him, to substitute and appoint, and at pleasure to revoke, hereby ratifying and confirming whatsoever my said attorney shall lawfully do concerning the premises. In witness whereof, I have hereunto set my hand and seal, this first day of October, 1787.

THOMAS BOONE, [SEAL.]

Signed and delivered }
in the presence of }
PETER BRESLET,
BENJ. SPINKER, jr.

Berks county, State of Pennsylvania.

[STATE SEAL.] This first day of October, 1787, personally came before me, David Levair, prothonotary of the court of common pleas, in and for said county, and acknowledged the aforesaid power of attorney to be his act and deed: desired a public testimonial from me. In testimony whereof, I have hereunto set my hand, and caused the seal of my office to be affixed, this day and year afore-mentioned.

DANL. LEVAIR.

A copy. Att. THO. ARNOLD, C. B. C.

[*Jeremiah Boone's will*]

In the name of God, amen: I, Jeremiah Boone, of the township of Oley, in the county of Berks, and State of Pennsylvania, carpenter, considering the uncertainty of this mortal life, and being of sound and perfect mind, blessed be Almighty God for the same, do make and publish this, my last will and testament, in manner and form following, that is to say:

Imprimis. My will is that my just debts and funeral expenses be honestly paid out of my estate, by my executors hereinafter named.

Item. I have a bond against John Albright for fifty pounds, which bond I give and bequeath to my sister Dina Williams, her heirs and assigns.

Item. I give and bequeath to my sister in-law, Sarah Boone, (widow of my brother William,) the sum of sixty pounds, to be paid to her within a year after my decease, with interest.

Item. I give and bequeath fifty pounds, to be left in the care of Isaac Lee, to be put to interest, for the use of Abigail Pancost, to be delivered to her, both principal and interest, as occasion may require; and if she should die before her youngest children comes to such an age as to be able to maintain themselves, then the remainder thereof to be applied to the bringing up of such children; and if there should any of that money remain after the decease of said Abigail, and not be wanted for the bringing up of the younger children, then I give and bequeath that to the two younger surviving children, to be equally divided between them.

Item. I give and bequeath fifty pounds to Mary Lee, (wife of Isaac Lee,) to be paid to her within two years after my deceased

Item. I give and bequeath one hundred pounds to George Boone, (son of my brother Josiah,) to be paid within two years after my decease; but, if he should die before the end of the two years, I give and bequeath the same to my two brothers, Josiah and Hezekiah, to be equally divided between them.

Item. I also give and bequeath to my said two brothers, Josiah and Hezekiah, each the sum of twenty-five pounds, to be paid within three years after my decease.

Item. I give and bequeath unto Solomon Coles, (son of my sister Dinah) the sum of fifty pounds, to be paid within a year after my decease.

Item. I give and bequeath to George Hughes, (son of my sister Hannah,) the sum of seventy-five pounds, to be paid within a year after my decease.

Item. I give and bequeath fifty pounds to the use of Exeter Preparative Meeting, to be paid into the hands of the overseers thereof, within three years after my decease.

Item. I give and bequeath unto Jeremiah Boone, (son of my brother William,) and to his heirs and assigns, all my plantation, or tract of land, situate in Northumberland county, which I purchased of John Murry, called the Trap, containing three hundred and forty-four acres, more or less; with the appurtenances, to hold to him, his heirs, and assigns forever, subject to the payment of fifty pounds to Abner Williams, (son of my aforesaid sister Dinah,) within two years after my decease.

Whereas, I have sold my plantation, situate in Chester county, to Peter Hilbesh, I do hereby authorize and empower my executors, hereinafter named, to execute unto the said Hilbesh a good and lawful deed for the same, agreeable to an article of agreement; but if the bargain between me and Hilbesh shall not stand good, then, and in such case, my will is, and I do hereby authorize and empower my said executors to sell and make a good and lawful deed or deeds for all my other lands, (not herein before bequeathed,) wheresoever they may lie or be, whereof I shall die seized and possessed.

Item. My will is, that all the rest, residue, and remainder of my whole estate, both real and personal, after all my just debts and aforementioned legacies are paid, be equally divided among my brother William's five sons, to wit, William, George, Thomas, Jeremiah and Hezekiah.

And lastly; I nominate and appoint the above named George Boone, Thomas Boone, and Jeremiah Boone, sole executors of this my last will and testament; hereby revoking all former wills by me made. In witness whereof, I have hereunto set my hand and seal, the twentieth day of the second month, in the year of our Lord, one thousand seven hundred and eighty-seven.

JEREMIAH BOONE, [SEAL.]

Signed, sealed, published, and declared, by the said Jeremiah Boone, to be his last will and testament, in the presence of us, who in his presence, and at his request, have subscribed our names as witnesses hereunto. The words, "both principal and interest" in page 1st, being first interlined.

THOMAS LEE.
THOS. CHERINGTON.

State of Pennsylvania, Berks county, ss.

[L. S.] I do hereby certify that the foregoing writing contains a true copy of the original will of Jeremiah Boone, deceased; which said original was duly proven on the 30th day of March, A. D. 1787, and remains filed of record in the register's office at Reading, in and for the county of Berks. In testimony whereof, I have hereunto set my hand and seal, this 29th day of May, 1832.

GEO. SMITH, *Regr.*

[*Copies subpœnas in chancery, Chiles* vs. *Hoy's heirs.*]

Bourbon circuit court, sct.

Chiles, &c. *vs.* Hoy's heirs. } In chancery.

The following are the subpœnas in chancery, and patent of William Hoy, used, and that issued in this suit, to wit:

The commonwealth of Kentucky to the sheriff of Madison county, greeting: We command you to summon Edward Brown, and Sally his wife; Hugh Brown, and Keziah his wife; John Newland, and Celia his wife; Fanny Hoy, by Hugh Brown, her committee; and Green Clay, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next May term, to answer a bill in chancery exhibited against them and others, by William Chiles, Hezekiah Boone, George Boone, and Thomas Boone, and this they shall in no wise omit, under the penalty of one hundred pounds. Witness, Thomas Arnold, clerk of our said court, this 26th day of January, 1818, in the 26th year of the commonwealth.

(Signed,) THO. ARNOLD.

Sheriff's return. Executed on Green Clay, on the 18th day of March, 1818. Also, executed on Edward Brown, and Hugh Brown, on the first day of April, 1818.

(Signed) JOHN DUNCAN, D. S. for
NATHAN LIPSCOMB, S. M. C.

Executed on John Newland, and Celia his wife; and Fanny Hoy, and Sally Brown, Keziah Brown, on the 23d of April, 1818.

(Signed,) JEREMIAH WHITE, D. S. for
N. LIPSCOMB, S. M. C.

The commonwealth of Kentucky, to the sheriff of Fayette county, greeting: We command you to summon Lawrence Flournoy, and Theodocia his wife; and Elizabeth South, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next May term, to answer a bill in chancery exhibited against them and others, by William Chiles, Hezekiah Boone, George Boone, and Thomas Boone, and this they shall in no wise omit, under the penalty of one hundred pounds. Witness, Thomas Arnold, clerk of our said court, this 20th day of February, 1818, in the 26th year of the commonwealth.

(Signed) THO. ARNOLD.

Executed on Theodocia Flournoy, 17th February, 1818; and Lawrence Flournoy not found.

(Signed) G. E. DAWS, D. S. for
RO. S. RUSSELL, S. F. C.

Executed on Elizabeth South, 10th March, 1818.

(Signed) RICE B. DAVENPORT, D. S. for
ROBT. S. RUSSELL, S. F. C.

The commonwealth of Kentucky, to the coroner of Estell county, greeting: We again command you to summon James Hoy to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next August term, to answer a bill in chancery, exhibited against him and others, by William Chiles, Hezekiah Boone, George Boone, and Thomas Boone; and this he shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 9th day of July, 1818, and in the 27th year of the commonwealth.

(Signed) THO. ARNOLD.

Executed July 20th, 1818.

(Signed) EBENEZER PARKE, Cor. E. C.

The commonwealth of Kentucky, to the sheriff of Franklin county, greeting: We again command you to summon Lawrence Flournoy, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the 18th day of the present August term, to answer a bill in chancery exhibited against him and others, by William Chiles, &c.; and this he shall in no wise omit under the penalty of one hundred pounds. Witness, Thomas Arnold, clerk of our said court, this 12th day of August, 1818, in the 27th year of the commonwealth.

(Signed) THO. ARNOLD,

Executed on the 26th of August, 1818.

(Signed) Z. WHITE, D. S. for
JOHN BARTLETT, S. F. C.

[*Hoy's patent.*]

Patrick Henry, esq. governor of the commonwealth of Virginia: To all to whom these presents shall come, greeting:

Know ye, that by virtue of a pre-emption treasury warrant, number 1292, issued the 26th day of February, 1791, there is granted by the said commonwealth unto William Hoy, assignee of Reuben Searcy, a certain tract or parcel of land, containing one thousand acres, by survey bearing date the 22d day of October, 1783, lying and being in the county of Bourbon, and bounded as followeth, to wit: Beginning at the east corner of his settlement; thence east one hundred and fifty-three poles and three links, to three sugar trees; thence north four hundred and seventy-three poles, three links, to a black walnut and honey locust; thence west four hundred and seventy-three poles and three links, to three cherry trees; thence south two hundred and seventy-five poles and three links, to the west corner of his settlement; thence east three hundred and twenty poles, to the be-

ginning, with its appurtenances; to have and to hold, the said tract or parcel of land, with its appurtenances, to the said William Hoy and his heirs forever. In witness whereof, the said Patrick Henry, esq. governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed at Richmond, on the tenth day of July, in the year of our Lord one thousand seven hundred and ninety-five, and of the commonwealth the tenth. P. HENRY.

A copy. Att: JNO. M. FOSTER, Regr. L. O.
by AUSTIN P. COX, D. Reg.

Copies. Att: GEO: W. MILLER, D. C.

[*Copy of opinion and decree—Court of appeals*]

Copy. Decree.

State of Kentucky, sct.

Court of appeals, 9*th April*, 1827.

Hugh Brown and wife, Jones, William, and Fanny Hoy; Lawrence Flournoy and wife, John Newland and wife, Eliza South, and Green Clay—Plaintiffs,

against

William Chiles, Hezekiah, Tho: William Squire, John, Samuel, and Edward Boone, Jesse Cofer and wife, William Hume and wife, Enoch, Nancy, William, Jesse, and Asa Wilcox, heirs of George Boone, Allen Thursey, and Solomon Hern, William, Toldston and wife, and Joseph Helm—Defendants.

} Upon a writ of error to a decree of the Bourbon circuit court.

The court being sufficiently advised of and concerning the premises, delivered the following opinion, to wit:

Without adjudicating the merits or demerits of the complainant or defence in this cause or proceedings, further than as to the omission of proper parties, it seems to this court that the personal representatives of William Hoy, deceased, and the heirs and personal representatives of John South, deceased, are necessary parties to be brought before the court, and that the cause was improperly and prematurely heard without those parties. It is, therefore, decreed and ordered, that the decree pronounced in the court below, be reversed, annulled, and set aside that the cause be remanded for new proceedings; that the complainants have leave to amend their bill for the purpose of bringing before the court the heirs and personal representatives of John South, deceased, and the personal representatives of William Hoy, deceased; if they shall apply, therefore, and present their bill in reasonable time, and on failure to do so that the bill be dismissed; and in case the complainants shall amend their bill, that all the defendants have leave to answer and defend the amended bill, and for such further proceedings as the principles and usages of courts of equity shall authorize and require; which is ordered to be certified to said court.

A copy. Test:

[*William Flournoy's patent.*]

Beverly Randolph, esq. lieutenant governor of the commonwealth of Virginia. To all whom these presents shall come, greeting:

Know ye, that by virtue, and in consideration of a Land Office Treasury warrant, No. 787, issued the 15th day of October, 1779, there is granted by the said commonwealth unto William Flourney, a certain tract or parcel of land, containing four hundred and ninety-two acres by survey bearing date the 24th day of September, 1785, lying and being in the county of Fayette, on Hinkson's fork of Licking, adjoining the lands of Ruddell, Haggin, Hinkson, and Elliott, and bounded as followeth, to wit: Beginning at a hickory and sugar tree, on the bank of the creek, and corner, to George Ruddell's settlement, extending from thence S. 31°, W. 228 poles, to an elm and buckeye trees, on a branch; thence S. 53°. W. 1330 poles, to two buckeyes and a sugar tree, in a line of John Higgins' pre-emption; thence with the same, N. 45°, W. 114 poles, to his corner buckeye and sugar tree, in Hoy's line; thence with said line N. 45°, E. 72 poles, to his corner ash, and buckeye; thence N. 29¾, E. 213 poles, to a sugar tree and two ash trees; thence N. 9°, E. 152 poles, to two mulberry trees, in John Hinkson's pre-emption; thence with a line of the same, S. 25°, E. 20 poles, to his corner, a sugar and two ashes; thence with another of his lines, N. 65°, E. 94 poles, to a white oak and sugar tree, on the bank of the creek; thence up the same, as it meanders S. 44°, E. 104 poles, S. 73°, E. 78 poles; N. 83° E. 39 poles, to the beginning; with its appurtenances to have and to hold, the said tract or parcel of land, with its appurtenances, to the said William Flournoy and his heirs forever.

In witness whereof, the said Beverly Randolph, esq., lieutenant governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the 29th day of June, in the year of our Lord one thousand seven hundred and eighty-seven, and of the commonwealth the 11th.

BEVERLY RANDOLPH.

A copy. Teste. JNO. M. FOSTER, R. L. O
by E. A. MACURDY, D. R.

[*Flournoy's deed to Trabue, &c.*]

This indenture, made this thirtieth day of April, in the year of our Lord one thousand seven hundred and ninety, between William Flournoy, jr. of the county of Chesterfield, of the one part, and Stephen Trabue, of the aforesaid county of Chesterfield, James Trabue, of the county of Prince Edward, and John Hinkson, of the county of Bourbon, of the other part, witnesseth, that for, and in consideration of the sum of eighty-three pounds, two shillings, and eight pence, current money of Virginia, to him, the said William Flournoy, in hand paid by the above said Stephen Trabue, and other reasons and services done by the said James Trabue and John Hinkson, the receipt whereof he doth hereby acknowledge, and himself fully satisfied, have given,

granted, bargained, and sold, and by these presents, doth give grant, bargain and sell, unto the said Stephen Trabue, James Trabue, and *and* John Hinkson, and their heirs and assigns forever, one certain tract or parcel of land, situated, lying, and being in the county of Bourbon, containing by estimation four hundred and ninety-two acres, be the same more or less, and bounded as followeth, viz: adjoining the lands of John Hinkson, George Ruddell, and John Haggin, together with all houses, orchards, woods, and underwoods, water and water-courses, with all the appurtenances thereunto belonging, or in any wise appertaining; to have and to hold the said granted land and premises, that is to say, to James Trabue, one hundred and eighty-two acres of the above-mentioned land, where the said Stephen Trabue shall lay it off to him altogether; and said John Hinkson sixty acres of the said mentioned land, adjoining the said John Hinkson's mill seat, agreeable to bargain, to them the said James Trabue and John Hinkson, and to their heirs and assigns forever in full and absolute right in fee simple, without any let, hindrance or disturbance whatsoever, from me or under me, to all or any part or parcel thereof; and the said William Flournoy, for himself, his heirs, executors, administrators, and assigns, the above sold land of two hundred and forty-two acres, and premises, with the appurtenances, unto the said James Trabue and John Hinkson, their heirs, executors, administrators, and assigns, shall and will warrant, and forever defend, by these presents, against all person or persons whatsoever, laying any claim, right or title to it by me, or under me, my heirs, executors, administrators, or assigns, forever. Also, to the above said Stephen Trabue, the residue of the abovementioned four hundred and ninety-two acres of land, and premises, to him the said Stephen Trabue, and to his heirs and assigns forever, in full and absolute right in fee simple, without let, hindrance or disturbance whatsoever, from all and every person or persons whatsoever, that shall lay any claim, right or title to the above sold land and premises, or any part thereof; and the said William Flournoy, for himself, his heirs, executors, and administrators, the above sold land and premises, with the appurtenances, unto the said Stephen Trabue, his heirs, executors and administrators and assigns, shall and will warrant, and forever defend, by these presents, against all person or persons whatsoever. In witness whereof, the said William Flournoy hath hereunto set his hand and affixed his seal, the day and year above written.

WILLIAM FLOURNOY, [L. S.]

Signed, sealed, and acknowledged, in presence of
JOHN ROBERTS,
JAMES ELLIOTT,
ROBERT HASKINS, JR.

At a court held for Bourbon county, at the court house thereof on Tuesday, the 20th of July, 1790, this deed of bargain and sale from Flournoy to Trabue and Hinkson, was proved by the oaths of John Roberts, James Elliott, and Robert Haskins, Jr. witnesses thereto, and ordered to be recorded.

Teste, JOHN EDWARDS, Clk. B. C

[*Stephen Trabue and wife to James Thomas, deed.*]

This indenture, made this fifteenth day of February, in the year of our Lord one thousand seven hundred and ninety-two, between Stephen Trabue, and Jane his wife, of Woodford county, district of Kentucky, and State of Virginia, of the one part; and James Thomas, of Bourbon county, district and State aforesaid, of the other part; witnesseth, that for and consideration of forty pounds by the said James Thomas to the said Stephen Trabue, and Jane his wife, in hand paid, the receipt whereof is fully acknowledged, they, the said Trabue, and Jane his wife, hath given, granted, bargained, and sold, and, by these presents, doth give, grant, bargain, and sell unto the said James Thomas, his heirs and assigns, a certain tract or parcel of land lying and being in the county of Bourbon aforesaid, and on the waters of Townsend run, a branch of South Licking, adjoining David Wilson on the southeast, James Thomas, sen. on the north, and John Jones on the southeast, beginning at a buckeye and ash corner to said Jones', on Wilson's line; thence south forty degrees east, 120 poles, with Jones' line to locust and hickory; thence south 31 degrees west, 80 poles, to an elm and buckeye corner to said Thomas; thence, with his line, N. 65 degrees west, 190 poles, to a sugartree and two elm saplings in Wilson's line; thence, with his line, N. 62 degrees west, 160 poles, to the beginning; containing, by survey, one hundred acres. To have and to hold the aforesaid land, with the appurtenances, and all rights and privileges and improvements to the same, or in any wise belonging to him, the said Stephen Trabue, and Jane his wife; that he, the said James Thomas, his heirs and assigns, shall and may, forever hereafter, peaceably and quietly, have, hold, occupy, and possess, and enjoy the aforesaid granted land and premises, without the let or molestation of any person whatsoever, and free and clear from all manner of incumbrances whatsoever; and the said Stephen Trabue, and Jane his wife, doth, for themselves, their heirs, executors, and administrators, warrant, and forever defend, the aforesaid land and premises to him, the said James Thomas, his heirs and assigns forever, against the claim or claims of all manner of person or persons whatsoever. In testimony whereof, we have hereunto set our hands and seals the day and year first above written.

STEPHEN TRABUE. [L. S.]
JANE TRABUE. [L. S.]

April Court, 1792.

This deed of bargain and sale from Stephen Trabue, and Jane his wife, to James Thomas, she being relinquished her dower therein, was acknowledged by said Stephen, and ordered to be recorded.

Test: JOHN EDWARDS, C. B. C. C.

Kentucky and county of Bourbon, to wit.

I, Thomas P. Smith, clerk of the county court for said county, do certify that the 4 foregoing pages contain a true copy of the deeds, Wm. Flournoy to Stephen Trabue, James Trabue, and John Hinkson, and said Stephen Trabue to James Thomas, from

the record in my office. Given under my hand this 26th August, 1828.

THO. P. SMITH,
By JO. T. MILLS, D. C.

[*Deed of Jas. Thomas to John Evalt.*]

This indenture made this 29th day of September, in the year of our Lord one thousand eight hundred and seventeen, between James Thomas, of Bourbon county, and State of Kentucky, of the one part, and John Evault, of the county and State aforesaid, of the other part, witnesseth, that the said James Thomas, and Pricilla his wife, for and in consideration of the sum of one thousand one hundred and forty-two dollars and fifty cents, to them, well and truly, in hand paid by the said John Evault, before the ensealing and delivery of these presents, the receipt whereof they do hereby acknowlege, and is therefore fully and amply satisfied, have granted, bargained, sold, aliened, and confirmed, and by these presents, doth grant, bargain, sell, convey, alien, and confirm to the said John Evault, and his heirs, all that certain tract or parcel of land and farm whereon the said Thomas now lives, lying and being in the said county of Bourbon, and on the waters of Townsend run, adjoining the land of David Wilson on the southeast, and bounded as follows, to wit: beginning at a buckeye and ash trees in said Wilson's line, and corner to Nicholas Smith; running thence south forty degrees west, one hundred and twelve poles to an ash and honey locust; thence south thirty-one degrees west, eighty-five poles to an elm and buckeye: then south forty-eight degrees west, one hundred and twelve poles to two sugar and buckeye trees; then north forty-one and a half degrees west, one hundred and eighty-two poles to a stake in Wilson's line; then, with said line, north sixty-two degrees east, one hundred and ninety-two poles to the beginning; containing one hundred and eighty-seven acres. To have and to hold the said tract or parcel of land and farm, with all and singular the premises and appurtenances thereunto belonging, or in any wise appertaining, unto the said John Evalt and his heirs; and the said James Thomas, for himself and his heirs, the said tract or parcel of land and farm, as is above butted and bounded, unto the said John Evalt, his heirs or assigns, shall and will warrant, and forever defend, against the claims and demands of all and every person or persons whatsoever, claiming, or pretending to claim, any right or title thereto, or any part or parcel thereof. In witness whereof, the parties first named in this indenture have hereunto set their hands and seals the day and date above written.

JAMES THOMAS. [L. S.]
PRISCILLA THOMAS. [L. S.]

In witness of—

Bourbon county court, clerk's office, sct.—Sept'r 29, 1817.

This deed of bargain and sale from James Thomas, and Priscilla his wife, to John Evault, was this day acknowledged before me, by the said Thomas and wife, to be their act and deed; and she being examined by me separate and apart from her said husband, as the law directs, declared that she did, freely and volun-

tarily, relinquish her right of dower to the within mentioned premises, and desired that the same might be recorded; and the same is thereupon duly recorded in my office.

Attest: THO. P. SMITH.

Bourbon county court.

I, Thomas P. Smith, clerk of said court, do certify that the foregoing two pages contain a true copy of the deed from James Thomas to John Evault, from the record in my office.

Given under my hand this 6th August, 1828.

THO. P. SMITH,
By JO. T. MILLS, D. C.

[*Deed, Hoy, &c., to Chiles.*]

This indenture made and entered into, this first day of December, in the year of our Lord one thousand eight hundred and seventeen, between William Hoy, and Mildred Hoy his wife, Jones Hoy, John Sappington, and Parthenia his wife, late Parthenia Hoy, of the county of Montgomery, and State of Kentucky, of the one part, and William Chiles, of the same county and State, of the other part, witnesseth, that the said William Hoy, Jones Hoy, John Sappington, and Parthenia his wife, late Parthenia Hoy, have this day bargained and sold, and doth, by these presents, bargain, sell, and convey to the aforesaid William Chiles, for and in consideration of one hundred dollars to them in hand paid, all the right, title, interest, and claim, which they have, as heirs and devisees of William Hoy, deceased, in and to the following tracts of land, viz: one tract of 400 acres granted to John Townsend by the commonwealth of Virginia, and dated the 23d day of May, 1785; also, one thousand acres, in two surveys, granted to William Miller, as assignee of said John Townsend; also, one other tract of 1,400 acres granted to William Hoy, as assignee of Reuben Searcy, and dated the 10th day of July, 1785, and bounded as follows: beginning at a buckeye and ash northwest corner to McMillin's land; and then, with his line, east 473 poles to the patent corner two sugartrees; thence north 473 poles to the original patent corner, a black walnut and honey locust; thence west 473 poles to three cherry trees, the original patent corner; thence south to the beginning; situate on Stoner and South Licking; the other two on Townsend run, and all in Bourbon county, State of Kentucky, as by reference to the several grants will more fully appear. To have and to hold the aforesaid lands, with the appurtenances, to the said William Chiles, his heirs and assigns forever; and the aforesaid Wm. Hoy, Jones Hoy, John Sappington, and Parthenia his wife, late Parthenia Hoy, doth, by these presents, forever warrant and defend all the right, title, and interest in the abovementioned lands, that is vested in them, to the said William Chiles, his heirs and assigns, against the claim of them and their heirs, and all others claiming by, through, or under them, the said William Hoy, Jones Hoy, John Sappington, and Parthenia his wife, late Parthenia Hoy, but not against the claim or claims of any other person whatsoever.

In testimony whereof, we have hereunto set our hands and affixed our seals, the day and date first above written.

WILLIAM HOY. [L. S.]
PARTHENIA SAPPINGTON. [L. S.]
JOHN SAPPINGTON. [L. S.]
MILDRED HOY. [L. S.]

ALBERT G. DUNETT.
P. DUNETT.

Montgomery county, clerk's office, } *2d December*, 1817. }

I, Hugh Lane, deputy clerk of the court of the county aforesaid, do certify that this deed from Jones Hoy, William Hoy, and Wildred, his wife, John Sappington, and Parthenia, his wife, to William Chiles, was this day acknowledged by said William Hoy and John Sappington to be their acts and deeds, hands and seals, and the said Mildred Hoy, being by me privily and apart from her said husband examined as the law directs, freely and voluntarily relinquished her right of dower in and to the lands conveyed by this indenture, without the threats or persuasions of her said husband, and also the said Parthenia Sappington, wife of said John Sappington, being by me privily and apart from her said husband examined, and I having explained to her this indenture, she declared that she did freely and willingly seal and deliver the said indenture, as her hand and seal, act and deed, that she wishes not to retract it, she again acknowledged the said indenture then shewn by me to be her act and deed, which is certified to the clerk of Bourbon county, where the land lies, there to be recorded.

Test: H. LANE, *D. C.*

Bourbon county court, clerk's office, } *sct.* *May 18th*, 1818. }

This deed of bargain and sale from William Hoy and others to William Chiles, was this day produced to me, and by virtue of the certificate thereon endorsed, is thereupon duly recorded in my office.

Attest: THO. P. SMITH, *C. B. C. C.*

[*Deed from Green Clay to William Chiles.*]

This indenture, made this twelfth day of March, in the year eighteen hundred and twenty-five, between Green Clay, of the county of Madison and State of Kentucky, of the one part, and William Chiles, of the county of Montgomery and State aforesaid, of the other part, witnesseth, that the said Green Clay, for and in consideration of the sum of two hundred and sixteen dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold all the right, title, and interest which he, the said Green Clay, holds by a deed from John Newland and wife, bearing date the 23d day of May, 1814, to the following tracts of land lying in Bourbon county, to wit: one tract of 1,400 acres granted to William Hoy as assignee of Reuben Searcy, at the junction of Hinkson's and Stoner's forks, also a bond given by William Miller to said Hoy for John Town-

send's settlement and pre-emption, to have and to hold the said Clay's right, title, and interest, conveyed to him by the said Newland and wife, by the deed aforesaid, dated 23d day of May, 1814, aforesaid, in the said tracts of land aforesaid, lying in Bourbon county, viz: one tract of 1,400 acres of land granted to William Hoy, as assignee of Reuben Searcy, at the junction of Hinkson's and Stoner's forks; also in a bond given by William Miller to said William Hoy, for John Townsend's settlement and pre-emption, to the said William Chiles, his heirs and assigns forever; and the said Green Clay, for himself, his heirs, to the said William Chiles and his heirs, will warrant and forever defend the said bargained premises against himself, his heirs, and every person or persons claiming by, through, or under him, and against no other person or persons whatsoever. It being clearly understood and agreed on between these parties, that the said Clay hereby makes a deed of quit claim only.

In testimony whereof, I have hereunto set my hand and seal, the day and year first above written.

GREEN CLAY, [L. S.]

KENTUCKY, *Madison county*, } *sct.*

I, David Irvine, clerk of the court for the county aforesaid, do hereby certify, that this deed from Green Clay to William Chiles, was, on the 18th day of March, 1825, produced to me in my office and acknowledged by Green Clay to be his act and deed; and the same is hereby certified to the clerk of the Bourbon county court for record where the premises lie.

Given under my hand, as clerk aforesaid, this said 18th day of March, 1825.

DAVID IRVINE.

Bourbon county court, clerk's office, *August 16th*, 1825. } *sct.*

This deed of bargain and sale from Green Clay to William Chiles was this day produced to me, and the same, together with the certificate thereon endorsed, is thereupon duly recorded in my office.

Att. THO. P. SMITH, *C. B. C.*
By JO. T. MILLS, *D. C.*

Bourbon county court:

I, Tho. P. Smith, clerk of the county court for the county aforesaid, do certify, that these deeds from William Hoy and others to William Chiles and Green Clay, to said William Chiles, are truly copied from the record in my office.

Given under my hand this 12th day of May, 1829.

THO. P. SMITH,
By JO. T. MILLS, *D. C.*

[*Patent to Wm. Hoy for* 100 *acres.*]

Patrick Henry, esq., governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a pre-emption

treasury warrant, No. 1,292, and issued the 26th day of February, 1781, there is granted by the said commonwealth unto William Hoy, assignee of Reuben Searcy, a certain tract or parcel of land, containing one thousand acres, by survey, bearing date the 27th day of October, 1783, lying and being in the county of Fayette, on Stoner's fork of Licking, and bounded as followeth, to wit: Beginning at the east corner of his settlement; thence east 153 poles and three links to two sugar trees; thence north 473 poles and three links to three cherry trees; thence south 273 poles and three links to the west corner of his settlement; thence east 320 poles; thence south 200 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Hoy and his heirs forever.

In witness whereof, the said Patrick Henry, esq., governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day of July, in the year of our Lord one thousand seven hundred and eighty-five, and of the commonwealth the tenth.

PATRICK HENRY.

A copy. Attest:

JNO. M. FOSTER, R. L. O.,
By W. R. Foster, D. R.

[*Patent to Wm. Hoy for 400 acres.*]

Patrick Henry, esq., governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue of a certificate in right of settlement, given by the commissioners for adjusting the titles to unpatented lands in the district of Kentucky, and in consideration of the ancient composition of two pounds sterling, paid by William Hoy into the treasury of this commonwealth, there is granted by the said commonwealth unto William Hoy, assignee of Reuben Searcy, a certain tract or parcel of land, containing four hundred acres, by survey, bearing date the 22d day of October, 1783, lying and being in the county of Fayette, on Stoner's fork of Licking, and bounded as follows, to wit: Beginning at a buckeye and ash, corner to Samuel McMil*lion* settlement, and running from thence east 320 poles with said McMillion's line to a stake; thence north 200 poles to a stake; thence west 320 poles to a stake; thence south 200 poles to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said William Hoy and his heirs forever.

In witness whereof, the said Patrick Henry, esq., governor of the commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day of July, in the year of our Lord one thousand seven hundred and eighty-five, and of the commonwealth the tenth.

PATRICK HENRY.

A copy. Attest:

JNO. M. FOSTER, R. L. O.,
By E. A. McCurdy, D. R.

[*Copy of Rebecca Smelser's deposition.*]

The deposition of Barbara Smelser, taken at the house of Peter Smelser, agreeable to notice, to be read, as evidence, on the trial of a suit in chancery, now pending in the Bourbon circuit court, wherein William Chiles, &c., complainants, and Hugh Brown, James Hoy, &c., defendants:

The deponent, being of lawful age, and duly sworn, deposeth and saith, that her husband, Peter Smelser, settled this place in the year 1791, and that John South came down immediately, and conveyed and marked out the four hundred acres; which said four hundred acres have been held and occupied ever since under the claim of said South, who claimed the same under the bond from Reuben Searcy to William Hoy, and assigned by Hoy to George Boone; that, at the time we first settled, John South represented to my husband that he had traded for said bond; but that we afterwards found out that he had not got the bond, but, soon after, he obtained the bond from George Boone at Lexington, and informed him of the taking possession, who appeared to be well pleased at what was done: that she was present, and knows this to be the fact: and the deponent further states, that this place is situate upon the 400 acres, as above stated, which is a part of the settlement of William Hoy, assignee of Reuben Searcy.

(Signed) her BARBARA × SMELSER. mark.

[*Copy of Nicholas Smith's deposition.*]

Also, the deposition of Nicholas Smith, taken at the same place, to be read, as above stated, deposeth and saith, that, in the spring of the year 1798, he bought a bond upon John South for 200 acres of land, which was to be out of the settlement and pre-emption of William Hoy, assignee of Reuben Searcy; that shortly afterwards, John South came down and showed me the land; and that he, South, found out that the 400 acres surveyed for Smelser, and my 200 acres, would not take out all the land; he, South, agreed to let me have the balance, which was supposed to contain 60 or 70 acres, and I let him three hundred dollars, which was to go in payment for the land; and if that sum overrun, he was to pay back, and if it fell short, I was to make it up: that I took possession of the land, and held the possession ever since, under the said claim; that he afterwards found out South had no right to the land, and brought suit against him, and recovered back my $300, as above stated; and further saith not.

(Signed) NICHOLAS SMITH.

Bourbon county, to wit:

The foregoing depositions of Barbara Smelser and Nicholas Smith were sworn to, and subscribed before me, this 19th day of October, 1819.

(Signed) JAMES ROBINSON. J. P.

[*Commissioner's deed to Chiles.*]

This indenture, made the 7th day of January, in the year of our Lord 1822, between Thomas P. Smith, as commissioner, of

the one part, and William Chiles of the other part, witnesseth, that in a suit in chancery, in the Bourbon circuit court, between the said Chiles and others, complainants, and Edward Brown and Sally, his wife, Jones Hoy, Lawrence Flournoy and Theodocia, his wife, Hugh Brown and Keziah, his wife, John Newland and Celia, his wife, Elizabeth South, by Hugh Brown, her committee, defendants, it was, at the November term of the said court, 1822, decreed and ordered, that the complainant recover of the defendants the following parcels of land: 700 acres, part of William Hoy, assignee of Reuben Searcy's settlement and pre-emption, on Stoner's fork of Licking, and bounded as follows, to wit: Beginning at a fallen buckeye, the S. W. corner of said settlement and pre-emption; thence with the settlement line N. 88° east 446 poles to a forked cherry tree, crossing Stoner at 304 poles; thence with Ruddell's line N. 46° west, passing a post corner to Smelser at 114 poles; course continued 224 poles to an oak and sugar tree, on the bank of Stoner, corner to said Ruddell's pre-emption; course continued, in all, down the creek three hundred and forty-three poles to an oak, hickory, haw, and hornbeam, on the bank of the said creek; thence S. 88° west 298 poles to a stake in Hoy's old line, S. 27° west from a sugar tree; thence with Hoy's line S. 1½° E. 303 poles to the beginning; also, the following parcel of land, containing three hundred and eighteen acres, being a part of said settlement and pre-emption, and bounded, as follows: Beginning at a stake in the line of the survey of 700 acres; thence running N. 2° E. 90 poles to a fallen hickory and sugar tree, corner to George Ruddell's settlement, in a clift of the south fork of Licking; thence N. 88° east 140 poles to a stake; thence N. 1½° west 104 poles, crossing the south fork of Licking, to a stake in Hoy's old line, on the north bank of Licking, about two poles above five marked beeches; thence with Hoy's line S. 88 W. 345 poles, crossing South Licking; thence to a stake, Hoy's old corner, in a field; thence with his line south 1½ east 188 poles to a stake in Evault's meadow, corner to the aforesaid survey of 700 acres, one pole south, 27 west from a sugar tree; thence with a line of said survey of 700 acres N. 88° E. 196 poles to the beginning.

It was further ordered and decreed, that the said defendants do, on or before the first day of January, thence next ensuing, convey to the complainant, Wm. Chiles, the aforesaid two tracts of land, by deed of bargain and sale, with only special warrantee; and, on default of their making such conveyance on the said first day of January, that Thomas P. Smith be appointed a commissioner to make the said conveyance for them: and the said defendants have failed to make said conveyance on the said first day of January, according to said decree: Now, the said Smith, commissioner for and on behalf herein before named, and in pursuance of the said decree, and by virtue of the law in such cases made and provided, have granted, bargained, and sold, and by these presents doth grant, bargain, and sell, convey and confirm, unto the said William Chiles, the aforesaid two tracts of land, in the metes and bounds before given in the recital of the decree aforesaid; to have and to hold the said two tracts and parcels of land, with the premises thereunto belonging, to the said William Chiles,

his heirs and assigns forever: and the said Smith, as commissioner as aforesaid, doth covenant for and on behalf of the said defendants, and doth bind them to warrant and forever defend the aforesaid two tracts or parcels of land unto the said Chiles, his heirs and assigns, against the claim of the said defendants, and all persons claiming under them, as fully and completely as said commissioner, by said decree, is authorized to do.

In witness whereof, the said commissioner hath set his hand and seal, the day and year first before written.

THO. P. SMITH. [L. S.]

Bourbon circuit, sct., January 7th, 1822.

This deed of bargain and sale from Hoy's heirs, by commissioner, to William Chiles, was produced to me in my office by Tho. P. Smith, the commissioner therein named; which, being acknowledged by him to be his act and deed, is duly admitted to record, at the request of said Chiles.

Att:

THO. ARNOLD, C. B. C. C.

Copies. Att:

G. W. MILLER, D. C. B. C. C.

I, William Boone, of Exeter township, in the county of Berks, and province of Pennsylvania, being in health and proper understanding, through divine mercy, do make my will and testament as follows, viz.: I desire my debts to be paid as soon as the circumstance of my affairs will admit of it.

2dly. I give to my wife one hundred pounds in money, and all my household goods, one beast, the choice of ye horse kind, two cows, and all my household furniture, during her widowhood; but, if she marries, the money shall be returned to my sons, and divided equally among them, and my said loving wife hold the remainder to herself, her heirs and assigns forever.

3dly. I give to my daughter Abigail, the wife of Aden Pancoast, seventy pounds over and above what she has already had, to be paid unto her three years after my decease.

4thly. I give to my daughter Mary one hundred pounds, to be paid unto her at ye age of twenty years, if she lives to that age, but if she dies, and her sister Abigail survives her, or leaves issue lawfully on her begotten, then, the one-third of Mary's share shall assend to my said daughter Abigail or her surviving heirs, if any be, if not, then my son Mordecai shall have it; the other third shall assend to my wife during life, and after her decease, be returned to my children, and equally divided among them, or the survivors of them.

5thly. The rest of all my real and personal estate, only ten pounds, I give and devise to my sons, to be equally divided between them, allowing my eldest son, Mordecai, fifty pounds more than either of the others, to be taken out of the whole, and the remainder to be equally divided between them, or the survivors of them. I give and bequeath the sum of ten pounds to the use of Exeter meeting, to be left in the care of the overseers of ye said meeting, to be applied in repairing the burying ground, or such other uses as the overseers and orders of said meeting think

proper, to be paid to them out of the money left in the hands of Abel Thomas, one of the ministers of ye said meeting.

6thly. It is my will that all my male children's money shall be put to use for them, till they arrive to their proper ages, and the interest therefrom arising to be paid to my loving wife, until they arrive to the age of fifteen years, to defray ye expenses of their education and maintenance, and that then my said sons be put to trades, at their own liking, until they arrive to the age of twenty-one years.

I nominate and appoint my affectionate brother, Jeremiah, and my son Mordecai my executors, authorizing and empowering them to execute titles, deeds, and conveyances, for all lands by me sold, and all such lands wherein I have claims, or the survivor of them, ratifying, confirming, and allowing all such acts and deeds as my said executors shall, from time to time and at all times, commit, execute, and do, in settling my outward affairs, &c. I publish, pronounce, and declare this, and no other, to be my last will and testament, in presence of the subscribing witnesses.

In testimony whereof, I have hereunto set my hand and seal, ye 23d day of the fifth month, 1768.

WILL'M BOONE. [L. S.]

EDWARD HUGHES.
GEORGE HUGHES.

State of Pennsylvania, Berks county, sct.

[L.S.] I do hereby certify that the foregoing writing doth contain a true copy of the original will of William Boone, deceased; which said original was duly proven on the 6th day of December, A. D. 1771, and remains filed of record in the register's office at Reading, in and for the county aforesaid.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said office, this 29th day of May, A. D. 1832.

GEO. SMITH, *Reg'r.*

[*Copy record: Chiles, &c.* vs. *Hoy's heirs.*]

Bourbon circuit, sct.

WILLIAM CHILES, &c., *complainants*, against WILLIAM HOY'S heirs, &c., *defendants*. } In chancery.

Be it remembered, that heretofore, to wit, at a circuit court holden for the county of Bourbon, on the 20th day of August, 1827, the defendants produced into court the opinion of the court of appeals, reversing the decree of this court, which is ordered to be recorded, and is in the words and figures following, to wit:

[*Opinion court of appeals produced and recorded.*]

State of Kentucky, sct. Court of appeals, April 9th, 1827.

Hugh Brown and wife, Jones, William and Fanny Hoy, Lawrence Flournoy and wife, John Newland and wife. Elizabeth South, and Green Clay, appellants, *against* William Chiles, Hezekiah Boone, Thomas, William Squire, John, Samuel, and Edward Boone, Jesse Cofer and wife, William Hirne and wife, Joseph Steele and wife, Enoch, Nancy, William, Jesse, and Asa Wilcox,

heirs of George Boone, appellees, upon an appeal from a decree of the Bourbon circuit court. The court being now sufficiently advised of and concerning the premises, it seems to them that the decree of the court below was premature and erroneous, without proper parties being brought before the court; it is therefore decreed and ordered, that the decree pronounced in the court below be reversed, annulled, and set aside, and the cause be remanded for new proceedings, and that the complainants have leave to amend their bill, if they shall apply therefor, for the purpose of bringing before the court the heirs and personal representatives of John South, deceased, and the personal representatives of Wm. Hoy, deceased, and present their bill in reasonable time, and on failure so to do, that the bill be dismissed; and in case the complainants shall amend their bill, and all the defendants have leave to answer and defend the said amended bill, and for such other proceedings as the usages and principles of courts of equity shall authorize, which is ordered to be certified to said court.

A copy. Attest: JACOB SURGERT, C. C. A.

[*Rule.*]

Therefore, it is considered by the court that the foregoing opinion be made the decree of this court, and that the cause be redocketed for new proceedings, thereon to be had; and on motion of the defendants, by their counsel, it is ordered that said complainants do amend their bill, herein, and bring the proper parties before the court, on or before the 2d day of the next term, or shew good cause to the contrary, or that this suit be dismissed, with costs; and the cause is continued until the next term.

And afterwards, on the 25th day of August, 1827, on motion of the complainants, by their counsel, leave is given them to amend their bill and bring the proper parties before the court; and it is ordered that the rule be discharged, which amendment is in the words and figures following, to wit:

[*Amended bill.*]

The complainants herein, by way of amendment to their bill, would state, that John South, as mentioned in their original bill, was administrator of William Hoy, deceased, and that he, the said South, has long since departed this life; that since his death, and at present, as they are informed and believe, there has not been, and is not at present, any personal representatives of the said William Hoy, deceased. They would further shew, that the said John South, as they are informed, at the time he departed this life, left the following children and heirs, and none others, to wit: Parthenia South, who intermarried with John Davidson, Elizabeth South, who intermarried with Adam Rogers, Judith South, who intermarried with David Hudson, Sarah South, who intermarried with one Baker, Elgiva South, Margaret South, John South, Thomas South, and Theodocia South, who intermarried with James Eastin. They would further shew, that Elizabeth South, wife of the said Adam Rogers, hath departed this life, leaving the following children, to wit: John Rogers, Elizabeth Rogers, Parthenia Rogers, Samuel Rogers, Jane Rog-

ers, and Adam Rogers, all of whom, children or heirs of said John South, deceased, they pray be made defendants to this the original and amended bills herein, and may, on their corporal oath, true and perfect answer make to the original and amended bills herein. They state that there is no personal representative of John South, deceased; they pray as in their former bills.

And thereupon the defendants, by their counsel, tendered a plea herein, to which plea the complainants, by their counsel, objected, which objections were overruled by the court, and the plea filed, which plea is in the words and figures following, to wit:

[*Plea.*]

The plea of the heirs at law of William Hoy, deceased, to the original as well as the supplemental and amended bills filed against themselves and others, by William Chiles and others, in the Bourbon circuit court:

These defendants, not waiving any of the matters of defence contained and used in their original answers, as well as the amendments theretofore filed to the said original, amended, and supplemental bills, but relying, and hereby again insisting and relying on the same for further plea in this behalf, the said defendants insist, and rely on, the various acts and statutes of limitation of actions in force in the State of Virginia, and district of Kentucky, composing a part of the said commonwealth, at the time when the supposed endorsement on the bond of the said Reuben Searcy is alleged to have been executed by their ancestor, the said William Hoy, deceased, to him the said George Boone, the said supposed endorsement not having been made, nor pretended to have been made, by him the said decedent. Wherefore, these defendants rely and insist on the statutes of limitation, as a bar to the relief prayed and sought for by the said bill; and they pray to be hence dismissed, with their costs herein expended.

Signed, ISHAM TALBOT, *pro Def'ts.*

[*Subpœna in chancery.*]

Upon the said amended bill, the following process issued, to wit: The commonwealth of Kentucky, to the sheriff of Fayette county, greeting:

We again command you to summon Moses Davidson and Parthenia his wife, Adam Rogers and Elizabeth his wife, David Hudson and Judith his wife, Baker and Sarah his wife, Elgiva South, Thomas South, Margaret South, James Eastin and Theodocia his wife, and John Rogers, Elizabeth Rogers, Parthenia Rogers, Samuel Rogers, Jane and Adam Rogers, all heirs of John South, deceased, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next November term, to answer a bill and amended bills, exhibited against them and others, by William Chiles and others; and this they shall in nowise omit, under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this thirteenth day of September, 1827, in the 36th year of the commonwealth.

"Signed," THO. ARNOLD.

[*Sheriff's return.*]

Sheriff's return:

Executed on Baker and wife, 6th October, 1827; and on Elgiva South, 17th October, 1827.

(Signed) GEO. W CLARKE, D. S.,
for Wm. R. Morton, S. F. C.

Executed on Thomas South, 3d November, 1827, only.

(Signed) WM. R. MORTON, Shff. F. C.

The commonwealth of Kentucky, to the sheriff of Jessamine county, greeting:

We command you to summon Moses Davis and Parthenia, his wife, Adam Rogers and Elizabeth, his wife, David Hudson and Judith, his wife, Baker and Sarah, his wife, Elgiva South, Margaret South, Thomas South, James Eastin and Theodocia, his wife, and John Rogers, Elizabeth Rogers, Parthenia Rogers, Samuel Rogers, Jane Rogers and Adam Rogers, all heirs of John South, deceased, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next November term, to answer a bill in chancery exhibited against them and others, by William Chiles, &c., and this they shall in no wise omit under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 13th day of September, 1827, in the 36th year of the commonwealth.

(Signed) THO. ARNOLD.

[*Sheriff's return.*]

Sheriff's return:

Executed 20th September, 1827, on David Hudson and wife, the balance not found.

(Signed) G. CALDWELL, D. S.
for J. Sale, shff. J. C.

The commonwealth of Kentucky, to the sheriff of Madison county, greeting:

We command you to summon Moses Davidson and Parthenia, his wife, Adam Rogers and Elizabeth, his wife, David Hudson and Judith, his wife, Baker and Sarah, his wife, Elgiva South, Margaret South, Thomas South, James Eastin and Theodocia, his wife, and John Rogers, Elizabeth Rogers, Parthenia Rogers, Samuel Rogers, Jane Rogers and Adam Rogers, all heirs of John South, deceased, to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next November term, to answer a bill in chancery exhibited against them, &c. by William Chiles, &c. And this they shall in no wise omit under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 13th day of September, 1827, in the 36th year of the commonwealth.

(Signed) THO. ARNOLD.

Sheriff's return:

Executed October 4th, 1827, on Moses Davidson and wife, and

on Eastin, and on Adam Rogers, John, Elizabeth, Parthenia, and Samuel, Jane and Adam Rogers, 27th October, 1827.

(Signed) G. CAMPBELL, D. S.
for D. Burton, S. M. C.

Executed on Parthenia Davidson, 30th October, 1827; and Elizabeth Rogers, wife of Adam Rogers, has departed this life. David Hudson, and Judith, his wife, Baker and Sarah, his wife, Elgiva South, Margaret South, and Thomas South, are no inhabitants of Madison county, and not found.

(Signed) A. MORAN, D. S.
for D. Burton, S. M. C.

[*Leave to withdraw bond.*]

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 23d day of November, 1827, on motion of the complainants, by their counsel, leave is given them to withdraw a copy of a bond filed in this cause from Reuben Searcy to William Hoy, the clerk first keeping a correct copy of the same, and upon the complainant's first giving to the clerk a receipt for the copy so withdrawn, and the cause is continued until the next term.

May term, 1828, continued:

And at a court holden for the circuit aforesaid, on the 19th day of August, 1828, the defendant, Theodocia Flournoy, having departed this life, it is ordered that this suit be, and stand revived in the names of and against Hoy B. Flournoy, Rowland Flournoy, Solomon Flournoy and Lawrence Flournoy, and Jones Flournoy, heirs of said Theodocia Hoy, deceased, and on motion of the complainants by their counsel, leave is given them to amend their bill herein, by inserting the name of John South, as a defendant thereto. And the cause is continued until the next term.

[*Order published.*]

And afterwards at a court holden for the circuit aforesaid, on the 12th day of November, 1828, the defendants, Solomon Flournoy, Lawrence Flournoy and Jones Flournoy, part of the heirs of Theodocia Flournoy, late Theodocia Hoy, deceased. Not having entered their appearance herein agreeably to the act of assembly and rules of this court, and it appearing to the satisfaction of the court, that they are not inhabitants of this commonwealth, on the motion of the complainants by their counsel, it is ordered that the said defendants do appear here, on or before the first day of our next November term, and answer said complainants' bills; and that a copy of this order be published in some duly authorised newspaper of this State, two months successively.

[*Proof published.*]

I, Joel Lyle, editor of the Western Citizen, an authorised newspaper, printed in Paris, Kentucky, do certify that the annexed chancery order, was inserted in said paper two months, commencing on the 3d of January, 1829, and continuing until the seventh of March, 1829. Given under my hand this 19th day of May, 1829. JOEL R. LYLE.

[*Process on amended bill.*]

Upon the order of revivor made herein at the August term, 1828, the following process issued, to wit:

The commonwealth of Kentucky, to the sheriff of Estill county, greeting:

We again command you to summon Hoy B. Flournoy, Rowland Flournoy, Solomon Flournoy, Lawrence Flournoy, and Jones Flournoy to appear before the judge of our Bourbon circuit court, at the court house in Paris, on the first day of our next November term, to answer an original bill, and bill of revivor, exhibited against them by William Chiles, &c., and this they shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ. Witness, Thomas Arnold, clerk of our said court, this 19th day of August, 1828, in the 37th year of the commonwealth.

(Signed) THO. ARNOLD.

Sheriff's return:

I acknowledge service of the within subpoena.

(Signed) HOY B. FLOURNOY.

September 22d, 1828.

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 20th day of May, 1829. This day came the complainants by their counsel; and it appears to the court by the certificate of Joel R. Lyle, editor of the Western Citizen, that the order of publication herein has been published according to law, and on motion of the complainants, leave is given them to

[*Bill revivor filed.*]

file a bill of revivor herein, which is done and filed accordingly, and the cause is continued until the next term.

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 28th day of August, 1829, the defendants, Margaret South, Eliza South, and John South, part of the heirs of John South, deceased, not having entered their appearance herein, agreeable to the act of assembly and the rules of this court; and it appearing to the satisfaction of the court, that they are not inhabitants of this commonwealth, on motion of the complainants by their counsel, it is ordered that the said defendants do appear here, on or before the first day of our next November term, and answer said complainants' bill; and that a copy of this order be published in some duly authorised newspaper of this State, two months successively.

[*Amended bill.*]

The amended bill, and bill of revivor, filed at the May term, 1829, is in the words and figures following, to wit:

To the honourable judge of the Bourbon circuit court, in chancery sitting, humbly complaining, shew unto your honor, your orator and oratrixes, Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, David Boone, Mary Ann Boone, William Boone and Thomas Boone, children and heirs at law of Thomas Boone deceased, that on the day of in the year , a bill in chancery was filed in this court in the names of William Chiles, Hezekiah Boone, George Boone and

the said Thomas Boone, now deceased, as complainants, against Edward Boone and Sally his wife, Jones Hoy, Lawrence Flournoy and Theodocia, his wife, Hugh Brown and Keziah, his wife, John Newland and Celia, his wife, Elizabeth South, Fanny Hoy, an idiot, by the said Hugh Brown, her committee, and Green Clay, defendants; that the said bill alleges and states amongst other things, that the said Thomas Boone, holding an equitable interest to a tract of land, of 700 acres, did, by an article of agreement, dated the 30th of November, 1802, sell the said tract of land to the said Hezekiah Boone, and afterwards, to wit, on the day of the said Hezekiah Boone, sold the said land to the said Chiles; and the said bill also prays that the said defendants may be compelled to convey the said tract of land to the said Chiles, the purchaser of the said equitable title. That after filing said original bill, several amendments thereto were filed, making additional allegations and other parties. That said suit progressed to a hearing, and at the term of said court in the year , a final decree was rendered therein directing the defendants to convey said land to the said Chiles, which decree, afterwards by a writ of error to the court of appeals was reversed, and the cause remanded to this court, for new and further proceedings to be had therein, as by the record and proceedings remaining in this court, reference thereto being had, will more fully appear; that the said bill with the amendments thereto were filed, by the attorney of said Chiles, and under his direction, and without the knowledge or consent of the said Thomas Boone, consent or authority. Your orators and oratrixes further state, that the said Boone, never did divest himself of his equitable title to the said tract of land as stated in said original bill and amendments; they admit that the said Thomas Boone, deceased, did, on the 30th of November, 1802, execute an instrument of writing, binding himself to convey the said 700 acres of land to the said Hezekiah Boone, upon condition that said Hezekiah should, in four years from that time, make his election to purchase the same, and pay the said Thomas seven hundred pounds out of a particular fund; but the said Hezekiah declined making the said purchase, did not pay one cent of the purchase money, and appropriated the said fund to other purposes; and also, relinquished all claim to said land, and refused to complete the said purchase. Your orators and oratrixes expressly charge, that the said Hezekiah Boone had no power or authority either in his own right, or as the agent of the said Thomas Boone, deceased, to sell either the legal or equitable title of said tract of land to the said Chiles, and that said Chiles has no right or title thereto, either in law or equity. That on the 25th day of March, 1825, the said Green Clay, by a deed of that date, conveyed to the said William Chiles, all the right, title and interest, which he had in and to the said tract of land, by virtue of said deed, from said John Newland and wife, as by a copy of said deed from said Clay to said Chiles, reference being thereto had, will more fully and at large appear. But your orators and oratrixes most expressly charge, was well apprized at the time, and a long time before he obtained the said deed from the said Green Clay, and the said Thomas Boone, deceased, had never divested himself of his equi-

table to said land, mentioned in the original bill, and that said Newland and wife at the time they conveyed to the said Clay, and that the said Clay, at the time he conveyed to said Chiles as aforesaid, had no right in equity to any part of the said land. They also charge, that at the time said Chiles obtained said deed from said William Hoy and John Sappington, and wife, he, the said Chiles was well apprized, that the said Thomas Boone deceased, had never divested himself of his equitable title to the said land mentioned in the said original bill, and that at the time they made said deed, they had no right in equity to any part of the said land. They therefore charge, that the said deed from Newland and wife to Green Clay, the deed from Clay to Chiles, and the deed from William Hoy to Chiles, were obtained by fraud, and with the full knowledge of the equitable title of the said Thomas Boone, deceased, under whom your orators and oratrixes derive their equity. And that therefore, the said deeds of conveyance as to your orators and oratrixes, are absolutely void. They *therefore* charge, that a commissioner was appointed by the said decree to convey the said tract of land to the said Chiles, and the said commissioner proceeded to make said conveyance in pursuance of said decree, as by a copy of said deed, reference thereto being had, as a part of the proceedings herein will more fully appear. That it appears by an amendment to the said bill, that John South who had intermarried with Elizabeth Hoy, one of the heirs of said William Hoy, deceased, departed this life, leaving a number of children as his heirs at law, who are named in said agreement. They further state, that said John South died intestate, and that administration of all his estate was granted Benjamin South, who has also departed this life; and they expressly charge, that no administration of the said John South deceased, has been granted to any one since the death of the said Benjamin South. Your orators and oratrixes would further state, that since the rendition of the said decree by this court, the said Thomas Boone, who is named as a complainant in said bill, has departed this life intestate, leaving your orator and oratrixes his only children and heirs at law. They therefore pray, that the said heirs of said John South deceased, may be made defendants to this suit, and that said original bill and all proceedings had thereon, may stand revived in the names of your orators and oratrixes, and that said proceedings may stand in the same plight and condition as the same were at the time of the death of the said Thomas Boone, deceased. They also pray that the said William Chiles may be made a defendant to this suit, and that he be compelled to answer the allegations of this bill of revivor and supplement; and that the deed executed by the said commissioner to said Chiles may, by a final decree of this court, be set aside, and that the defendants may all be compelled to convey their interest in said tract of 700 acres of land to your orators and oratrixes, instead of conveying to the said Chiles; and that your orators and oratrixes may have such other and further relief in the premises as to equity may belong. May it please your orators and oratrixes, the commonwealth's writ of subpoena ad reviviendum, directed, &c., commanding, &c.; and your orators and oratrixes *may*, and will ever pray, &c.

JOHN TRIMBLE, p. q.

1829, November, continued.

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 12th day of May, 1830.

This day came the complainants by their counsel; and it appearing to the satisfaction of the court, from the certificate of Joel R. Lyle, editor of the Western Citizen, that the order of publication made herein, at the August term of this court, 1829, has been duly published according to law, which is in the words and figures following, to wit: I, Joel R. Lyle, editor of the Western Citizen, an authorized weekly newspaper printed in Paris, Kentucky, do certify that the annexed chancery order has been inserted in said newspaper two months successively, commencing the fifth of September, and ending the 7th of November, 1829. Given under my hand this 7th day of November, 1829.

(Signed) JOEL R. LYLE.

[*Bill revivor.*]

And afterwards, to wit, at a court holden for the circuit aforesaid, on the 21st day of May, 1830, on motion of the complainants, by their counsel, leave is given them to file a bill of revivor herein, which is done and filed accordingly, to wit:

The complainants would shew that Hezekiah Boone, one of the complainants, is dead, and that Josiah Boone, William Cunningham, who intermarried with Deborah Boone, Hiram Boone, Mordecai Boone, Sally McLoyd, late Sally Boone, who intermarried with John McLoyd, Solomon Boone, Hezekiah Boone, Abigail Smith, late Abigail Boone, who intermarried with Humphrey Smith, Richard Harris, and Elizabeth his wife, late Elizabeth Boone, are the children and heirs of said Hezekiah Boone, deceased. They pray this suit may be, and stand revived, as to them, and the same decree rendered as would have been if their ancestor had not died.

[*Answer of Wm. Chiles.*]

And the defendant Chiles filed his answer, and also, a demurrer to the amended and cross bill of the complainants, Thomas Boone's heirs, which are as follows, to wit: The answer of William Chiles to a cross-bill exhibited against him in the Bourbon circuit court, by Sarah Boone, Lincoln Boone, and others. This defendant, saving and reserving to himself the benefit of every exception to the many untruths, misstatements, and misrepresentations in the said bill set forth; and for answer to so much of said bill as he deems it material for him to answer unto, he answereth and saith, that he prosecuted the suit, as set forth in said bill, to a final decree, as he charges he had a right to do, by virtue of the several contracts and assignments as set forth in said bill, which are referred to in the bill to which this is an answer; but he most positively denies any fraud in the management of said suit, or any transaction touching the same, on the contract between himself and Hezekiah Boone, which he charges was a complete authority for him, in connection with the contract between Hezekiah Boone and Thomas Boone, and the several assignments on Wm. Hoy's or Searcy's bond to Thomas Boone, to use the names of Thomas Boone, George Boone, and Hezekiah Boone,

as set forth in the original bill; all which are referred to as a part of this answer. This defendant denies the rescission of the contract between Hezekiah Boone and Thomas Boone, within the four years as stipulated in said contract, or at any time since, and calls for full proof of those facts; he charges that the said Hezekiah Boone, even if he had wished to rescind, had no power to do so after the four years. This defendant charges, and further insists, that the contract between the said Hezekiah and Thomas Boone was a mutual contract; and that the first act to be done under the said contract, was to be done by the said Thomas Boone, to wit: to settle the shares of the said Hezekiah and Boone, in the estate of their deceased father, in the State of Pennsylvania, and to account to the said Hezekiah Boone, in discharge of the said seven hundred pounds, as set forth in said bond: no part of which was done, or attempted to be done, by the said Thomas Boone. This defendant states, that the said Hezekiah Boone, in his life time, filed his answer to a bill exhibited by the said Sarah Boone, &c., in the federal court for the district of Kentucky, for the same matter that they for in this suit. This defendant refers to a copy of said answer, which shall be filed herewith in due time, which will explain the said payment; which copy, when filed, is to be taken and considered as a part of this answer. This defendant denies all the statements in the complainants' bill, which charges the want of knowledge, by Thomas Boone, of the prosecution of the original suit, or that he did not consent to the use of his name, &c. This defendant charges that the said suit was a matter of public record in the Bourbon circuit court, and all persons concerned bound to take notice of it; and that Thomas Boone was here, in the town of Paris, himself, in the years of 1819 or 1820, and could have had said suit dismissed as to himself. This circumstance shows the acquiescence of the said Thomas Boone, to the use of his name, as well as his total abandonment of any claim to the said bond, or the land therein mentioned. This defendant relies on those circumstances, and the great length of time, as a complete bar to the complainant's claim to the land. They have laid by until the complainant is likely to realize something by his investigation (and then by an active friend going post haste to Pennsylvania, to carry the news of the success of this defendant,) and attempts to set up a demand. This defendant further avers that, although the said Thomas Boone was here in 1819 or 1820, and his uncle Hezekiah lived in Woodford county, yet he did not make a demand of him for payment, or give up the contract: thus, for 18 or 20 years, to remain silent. This defendant relies upon this circumstance as a presumption of payment or full discharge. This defendant admits that, at the time of making the contract with Hezekiah Boone and George Boone, the attorney in fact of Thomas Boone; that the stipulation in said contract, which prohibited this defendant from compromising for less than three thousand dollars, was intended the one-half to be a fund out of which Thomas Boone should be paid, provided any balance should be due him, upon a final settlement, between him and Hezekiah Boone, which is the only notice this defendant ever had of any demand pretended by the said Thomas Boone. And this defendant avers

and believes that, if the complainants have any legal claim for any thing, it is for whatever balance in money they may be entitled to upon a final settlement with the heirs of said Hezekiah Boone, deceased; which settlement he conceives he has nothing to do with, in as much as it is due to him, whatever the heirs of the said Hezekiah Boone receives, the one-half of the proceeds agreeably to the contract with this defendant and said Hezekiah Boone, or the present complainant; but he insists they have no claim to the land itself. This defendant admits he holds a deed from Green Clay for the share of Newland and wife in the settlement and pre-emption; which share Clay held by deed, from Newland and wife; and that Clay, in his answer in the original suit, disclaimed any knowledge of the pretended equity of the complainants. This respondent charges, that said Clay was a fair bona fide purchaser for a full, fair, and valuable consideration of the land in said deed, conveyed from said Newland and wife, by deed, of bargain and sale duly recorded, and without notice of the equity set up by the complainants as heirs of the said Thomas Boone, deceased; which consideration, as this defendant believes, was paid by said Clay to the said Newland and wife, at and before the date of the said deed; and, having answered the cross-bill, he prays to be hence dismissed therefrom.

HANSON,
for respondent Chiles.

Sworn to in due form.

[*Demurrer.*]

The demurrer of William Chiles to a cross-bill exhibited against him in the Bourbon circuit court, by Sarah Boone, &c. as heirs-at-law of Thomas Boone, deceased. This defendant says, that the matters in said cross-bill stated are not good and sufficient to entitle the complainant to the relief therein specifically prayed for, and specifically asked; nor is he bound to answer thereto: and this he is ready to verify. Wherefore he prays judgment.

HANSON,
for said respondent Chiles.

August term, 1830.—This cause was continued.

Bourbon circuit, sct.

I, Thomas Arnold, clerk of said court, do hereby certify that the foregoing pages do contain a true and perfect transcript of the record and proceedings in the cause therein named, since the return of the same from the court of appeals, to the present date, as fully and completely as the same remains of record, before me in my office. Certified under my hand and seal this 22d day of September, 1830, in the 39th year of the commonwealth.

THO: ARNOLD. [L. S.]

[*Elizabeth South to Boone's heirs.—Deed.*]

This indenture, made this 13th day of July, 1830, between Elizabeth South, of the county of Pike, and State of Missouri, of the one part, and Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, David Boone, Mary Ann

Boone, William Boone, and Thomas Boone, children and heirs of Thomas Boone, deceased, of the other part, witnesseth: that whereas William Hoy, assignee of Reuben Searcy, on the 10th day of July, 1785, obtained a patent for 1,400 acres of land in the present county of Bourbon, Kentucky, on Stoner and South Licking, and bounded as follows, to wit: Beginning at a buckeye and ash northeast corner of McMillin's land; thence with his line east 473 poles, to the patent corner, two sugar trees; thence north 473 poles, to the original patent corner, a black walnut and honey locust; thence west 473 poles, to three cherry trees, the original patent corner; thence south, to the beginning. And whereas Thomas Boone, ancestor of the parties of the second part, became entitled to one half of said tract of 1,400 acres: Now, be it known, that said Elizabeth South, for and in consideration of five dollars to her in hand paid by the parties of the second part, has this day granted, bargained, and sold, and does by these presents grant, bargain, and sell, to the parties of the second part, all her right, title, and interest, in and to one half of said 1,400 acres, she being one of the children and heirs of William Hoy; it being the same land now in contest in a suit in chancery in the federal court for the district of Kentucky, in Frankfort: to have and to hold her said interest in the same, to the parties of the second part, their heirs and assigns forever; and she warrants and defends the title of said land, so far as her interest extends, to them, their heirs, and assigns forever, against herself, her heirs, and assigns, and all those claiming by, through, or under her; but she warrants against no other claim or title whatsoever: it being the intention merely to convey her interest in said land.

In testimony whereof, she has hereunto set her hand and seal, the day and year first above written.

ELIZABETH SOUTH. [L. S.]

STATE OF MISSOURI, } sct.
county of Pike, }

Be it remembered, that on this 14th day of July, in the year of our Lord eighteen hundred and thirty, before us, two of the justices within and for the county aforesaid, appeared Elizabeth South, who is personally known to us to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the said instrument to be her act and deed, for the purposes and uses therein mentioned.

Taken and certified the day and year aforesaid.

JOHN PRICE, *Jus. Peace.*
M. I. NOYES, *Jus. Peace.*

STATE OF MISSOURI, } ss.
county of Pike, }

I, Michael J. Noyes, clerk of the county court of said county, certify, that John Price and M. J. Noyes, before whom the annexed deed was acknowledged, and whose names are subscribed to the foregoing certificate of acknowledgment thereof, are, and were at the date of their certificate, acting justices of the peace within and for said county of Pike, duly commissioned and qualified according to law, duly authorised by law to take

and to certify the ackowledgment of deeds and other instruments of writing; and that good faith and full credit are and ought to be given to all their official acts as such.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court this 14th day of July, A. D. 1830, and in the 55th year of the independence of the United States. [L. S.]

M. J. NOYES, *Clk.*

[*Article of agreement between Thomas and Hezekiah Boone.*]

Article of agreement made and agreed upon, this 30th day of November, 1802, witnesseth, that Thomas Boone, of the State of Pennsylvania, hath bargained and sold, unto his uncle Hezekiah Boone, of the State of Tennessee, in Carter county, a certain tract of land, containing seven hundred acres more or less, lying on the waters of Licking, in the State of Kentucky, being one half *par* of a settlement and *preemtions* right of *Rubin Ciercey's* clai*n*, which the said Thomas Boone purchased from Squire Boone; but *Ciercey's* obligation was transferred to the said Thomas Boone by George Boone; the said George Boone is bound as surety for the *titel*, for the consideration of seven hundred pounds, lawful money of Pennsylvania, to be paid unto the said Thomas Boone, or his heirs, within four years from the date hereof, at the *choise* of said Hezekiah Boone, or his heirs, at any time within the said term of four years, to take the land or not as may suit them best; and the said Thomas Boone binds himself, his heirs, to make a good and lawful*l* title to the said Hez. Boone, or his heirs, at any time within the four years aforesaid, at receiving the consideration money in full; the said Hezekiah Boone *covenented* and agrees to give to the said Thomas Boone, in part, or in full, all his and his brother Josiah Boone's share in lands belonging to their father, George Boone, deceased, in the State of Pennsylvania; the said Thomas Boone is to receive their shares of the mone*yes* arising from the land sold, or to be sold, and to keep a regular account of all money*s* that is coming to the said Josiah and Hezekiah Boone arising from the said land, and *and* account to them for the sa*m* as payment or part thereof, for the above mentioned seven hundred pounds, if they shall conclude to take the land aforesaid.

In witness whereof, we bind ourselves, our heirs, the day and date above mentioned.

THO. BOONE. [L. S.]
HEZEKIAH BOONE. [L. S.]

Witnesses present,
MORDECAI LINCOLN.
THOMAS LINCOLN.

A copy taken from the original now on file, in the suit of Boone's heirs *vs.* Chiles, &c. February 17, 1832.

Attest:

JNO. H. HANNA, C. C. C. K. D.

Article of agreement entered into between Hugh Brown, of Madison county, and State of Kentucky, of the one part, and Robert Trabue, of Bourbon county, and State aforesaid, of the other part, witnesseth, that the said Hugh Brown binds himself

to convey by a quit claim deed, all the right and interest whatever, that his wife Keziah Brown, late Keziah Hoy, Jones Hoy, William Hoy, and Fanny Hoy, may have in the settlement and pre-emption granted to William Hoy as assignee of Reuben Searcy. It is understood that the conveyance of said land is to include the bounds only of seven hundred acres, on which William Chiles has brought suit for in the Bourbon circuit court, against the heirs of William Hoy, deceased. Reference to said William Chiles' bill will shew how the said seven hundred acres is to be laid off to said Robert Trabue. The said Hugh Brown binds himself to convey what interest Sarah Brown, wife of Edward Brown and widow of William Hoy, deceased, may have in said bounds, as heir at law to Rowland Hoy, deceased, who was heir to the said William Hoy, deceased. The said Robert Trabue on his part, binds himself to pay to Hugh Brown one hundred and eighty dollars, in two payments; fifty dollars to be paid on the 25th day of December next; one hundred and thirty dollars on the first day of July next; all in current money of Kentucky; and to take on him all responsibility whatsoever, in costs and fees, that would be recovered against the said Hugh Brown in the aforesaid suit, brought by William Chiles. It is understood that William Chiles has, through fraud, obtained a conveyance from William Hoy for his interest in the aforesaid seven hundred acres of land, as couched in said bond; and that the said Robert Trabue is to take on him at his risk, all the trouble of setting aside said conveyance. It is also understood that the said Trabue is at liberty to use every exertion to defeat said Chiles from recovering said land, or any part thereof. It is agreed, that said Robert Trabue, if it is necessary, is to use the names of Jones Hoy, William Hoy, Hugh Brown and Keziah his wife, and Hugh Brown as committee for Fanny Hoy, in the progress of the suit.

In testimony whereof, we do hereby set our hands and seals this 12th day of July, 1820.

HUGH BROWN. [L. S.]
ROBERT TRABUE. [L. S.]

Test:
JOHN BROWN,
his
JOSEPH + BROWN,
mark.

P. S. The said Robert Trabue further binds himself to stand firmly between the said William Chiles and the said Hugh Brown, for all damages whatever that might be obtained by said Chiles against said Brown, in consequence of this contract.

Test. WM. KING. ROBERT TRABUE.
Nov. 24, 1820.

AUDITOR'S OFFICE, KY.,
Frankfort, 20th November, 1832.
[*Auditor's certificate.*]

I do hereby certify, that I have this day examined the non-residents' tax books in this office, in the names of Thomas, Hezekiah, and George Boone a d cannot find any land entered

for taxation in either of their names, except one tract containing 600 acres in Shelby county, on 6 mile creek, in the name of Hezekiah Boone.

Given under my hand the date above.

PORTER CLAY,
Auditor Public Accounts.

The following are depositions, &c., filed in the suit aforesaid, to wit:

[*Cummins' affidavit.*]

The affidavit of James Cummins, taken at the office of John G. Martin, Paris, Bourbon county, on the 12th day of November, 1828, agreeable to notice, to be read as evidence in a suit in chancery now depending in the federal court for the district of Kentucky, wherein Thomas Boone's heirs are complainants, and William Chiles and others defendants, being of lawful age, and first duly sworn, deposeth and saith: that his son, Joseph Cummins, purchased of Jacob Smeltzer about two hundred and sixty acres of land; that the land, or possession in contest, of about forty acres of land, is in the said two hundred and sixty acres, which my said son Joseph, who is since dead, fenced up, and had the same in possession and ownership until his death. He further states, that John Evault refused to pay James Thomas the purchase money for the said slip of land, as said Thomas informed this affiant, as there was a better claim against it; and further states, that Joseph Cummins supposed that he held under Hoy's claim, to the best of his recollection; and further saith not.

JAMES CUMMINS.

Question by Trabue for Evault: At what time did James Thomas, sen., and James Thomas, jun., settle on the land in question?

Answer. I think it was something like thirty-six years ago. By same. Do you not know that Thomas used a part of the land as a sugar camp ever since?

Answer. Not to my knowledge, but have heard my children say so. By same. How long has the field been cleared adjoining Nicholas Smith?

Answer. I cannot tell you. By same. Does not Hoy's line run through that field?

Answer. I have heard so, but do not know. By same. Do you know at what time Thomas Thomas, the son of James Thomas, sen., died?

Answer. He died before his father. I never heard of his having any children. By same. Did not Smeltzer practice a fraud on your son Joseph, in the sale of that land; and was not the contract rescinded?

Answer. It was a great fraud; and the contract rescinded. The fraud was this: that Smeltzer sold land which was not his own. By same. Did Smeltzer have any title to the land he sold to Joseph Cummins?

Answer. I cannot tell. By same. Did, or not, Thomas have a still-house within the bounds of Hoy's claim?

Answer. I think he had. It was there about thirty years ago, at least. By same. Did your son Joseph fence in all the land that Evault's and Hoy's claim interfered with?

Answer. I can't tell that he fenced in all he bought of Jacob Smeltzer; and further saith not.

his
JAMES + CUMMINS.
mark.

[*Deposition of Stall.*]

Also, the deposition of Henry Stall, of lawful age, taken at the same time and place, and for the same purpose, deposeth and saith: That he lived with Joseph Cummins in 1821 or '22; that he, Cummins, fenced up a large woods pasture on the lands in controversy, as he understood. At the time that Cummins was fencing up said land, John Evault came to him, and forewarned him, Cummins, from putting the fence out so far. At the time the fence was building, Evault's hands cut timber on the land, and Cummins threatened to sue him, Evault, or his hands, for the same; when the hands stopped the chopping.

Question by Trabue for Evault. Was or not the rails that the lands was fenced with, which Evault claimed, old rails brought there? Answer. The rails were old on the fence down towards Evault's. By same. Do you know if Cummins cut any timber to make that fence on the land Evault claimed? Answer. I dont think he did. By same. Did or not Evault remove those rails? Answer. I saw no body move them, but understood that Evault done it, or caused it to be done. By same. Has or not Evault cut timber on that land ever since? Answer. I cant tell what amount, but he did cut some. By same. Do you or not know that the reason which caused Evault to stop cutting timber, was on account of a writ of stay waste, issued by Boone's heirs against him, since the death of Joseph Cummins? Answer. I cannot say what made him stop. And further saith not.

his
HENRY + STALL.
mark.

[*Deposition of Ab'm Spears.*]

Also, the deposition of Abraham Spears, taken at the same time and place, and for the same purpose, being of lawful age, and first duly sworn, deposeth and saith: That Joseph Cummins bought of Jacob Smeltzer about two hundred and sixty of land in Hoy's line. He states, that the slip of land in controversy was in possession of Joseph Cummins six or seven years back. This deponent says, that he always understood that John Evault moved about two or three hundred panels of the fencing on that land. Question by Trabue for Evault. Was or not the fencing of the land by Cummins against the will of Evault? Answer. Not to my knowledge. By same. Has or not Evault ever since that time exercised ownership over the land? Answer. Not to my knowledge as to the part that was fenced up. By same. Did or not Evault sell you a tree within that fencing? Answer. He sold me a tree, but I will not be positive whether it was in that boundary or not. By same. Did not Evault purchase a farm from Thomas? Answer. He purchased a farm of Thomas close by, but I do not know the lines. By same. Have you any recollection as to the time Tho-

mas settled on that farm? Answer. He was on it, within my recollection, twenty years, which is as far back as I can recollect. By complainants. Did you or not understand from John Evault, that he refused to pay the purchase money for the land, in consequence of an outstanding claim, which he thought better than his own? Answer. I think I understood so from Evault himself. By Trabue. Did Evault say that Thomas had exonerated him from the payment, or that he was still bound? Answer. I do not recollect. By same. Do you not know that Cummins rescinded his contract with Smeltzer? Ans. Yes, he did. By same. Do you know that Smeltzer had any right? Ans. I do not know what right he held under, but he always told me he had a title bond for the land. And further saith not.

AB'M. SPEARS.

[*Deposition of John Shawhen.*]

Also, the deposition of John Shawhen, taken at the same time and place, for the same purpose, being duly sworn, deposes and says: He has heard and understood that John Evault bought of James Thomas the land, or a part thereof, in question, and Evault refused paying the purchase money, in consequence of an outstanding title which he thought better. He states, that James Trabue informed him that Flournoy had conveyed this land to Stephen Trabue, Trabue to Thomas, and Thomas to Evault, and Evault was obligated to convey to James Trabue. These things have come to my knowledge, from James Trabue, within twelve months. He states, that Thomas was living in the neighborhood thirty-six years ago. He states, that a still house was built on the land in dispute from twenty-five to thirty years ago, and has been removed about twenty years. And further saith not.

JOHN SHAWHEN.

The foregoing depositions of James Cummins, Henry Stall, Abraham Spears, and John Shawhen, was this day taken, sworn to, and subscribed, in my presence, a justice of the peace for Bourbon county, Nov. 12th, 1828.

TANDY ALLEN.

The following depositions were this day taken at the office of John G. Martin, in Paris, to be read as evidence in a suit in chancery, now depending in the federal court of the United States for the district of Kentucky, wherein Tho. Boone's heirs are complainants, and William Chiles and others are defendants: and,

[*Deposition of James Hutchings.*]

First, the deposition of James Hutchings, who, being of lawful age, and first sworn, says, that George W. Baylor moved on a part of the land in dispute some time in April, 1823. That he does not remember whether he heard Baylor say any thing particularly about Boone's claim before he moved. He says, Baylor, he thinks, in the winter preceding his removal, had a boy working on said land. That early in the winter, 1822, Boon Ingles, as he heard him say, went to Pennsylvania, to see Tho.

Boone about the land in contest, and he knows Ingles was absent some time, and when he returned brought with him some hat trimmings, which he said he bought in Philadelphia. Soon after his return he heard Ingles tell Baylor, that he, Ingles, was authorized by Boone to prosecute the suit, and investigate Boone's claim, and that he would have the land. And further saith not.

JAMES HUTCHINGS.

[*Deposition of Wm. Burr.*]

Also, the deposition of William Burr, taken at the same time and place; who, being sworn, says, that in Nov. 1822, Boone Ingles started to Pennsylvania, to make some arrangement with Thomas Boone, as to the investigation of Thomas Boone's title to the land in contest in this suit: at least, Ingles said he was going to Pennsylvania for that purpose. In the year 1819, or 1820, Tho. Boone was at Ingles' house, but deponent does not recollect whether Tho. Boone said any thing to Ingles about the investigation of the claim. He states, however, that a few days after Tho. Boone left Ingles' he wrote a letter from Maysville, Ky., to Ingles, in relation to an investigation of that claim. He is not certain he read it, but heard Ingles read it, he thinks, two or three times. He states, that before Ingles went to Pennsylvania, he heard him and Baylor have some conversation about the claim of Thomas Boone to the land now in contest. The deponent has not a distinct recollection of what was said, but is under the impression Baylor spoke of an intention to purchase Smeltser's land, and that Ingles advised him not to do it, because the land belonged to Tho. Boone. He also thinks that Ingles told Baylor, he, Ingles, had a notion to investigate Boone's claim. He thinks Baylor and Ingles had some conversation about forming a partnership in the investigation of Boone's claim, but whether it was before Ingles went to Pennsylvania, or after his return, he does not remember. He says Baylor and Ingles, after the return of the latter from Pennsylvania, and before Baylor moved to the land, had different conversations about Boone's title. This deponent was at that time in partnership with Ingles in the hatting business, and Baylor was frequently in the shop, and it was in that way this deponent happened to hear said conversations. Baylor moved to the land in the spring, 1823.

By Wm. M. Baylor. State whether the letter from Boone to Ingles was or not in answer to one which Ingles procured Robert Trimble to write for him to Thomas Boone? Answer. It was. And further saith not.

WM. BURR.

Bourbon county, sct.

The foregoing depositions of James Hutchings and Wm. Burr, were this day taken, subscribed, and sworn to, before me, a justice of the peace in and for said county, at the office of John G. Martin, in Paris, in pursuance of the notice hereunto filed and accepted by Wm. M. Baylor, as guardian of George W. Baylor's heirs, to be read as evidence, so far as said George W. Baylor's heirs are concerned.

Given under my hand, this 27th Dec'r, 1828. Sworn to *it* my own house, by consent of parties.

HENRY TIMBERLAKE.

Boone's heirs, *vs.* Wm. Chiles, &c., } In chancery.

Friday, April 10th, 1829.—Met at the house of Nicholas Smith, in the county of Bourbon, pursuant to notice, to take the depositions of Michael Smith and others, and the witnesses failing to attend, the notice is continued until to-morrow morning, at ten o'clock.

Given under my hand, as one of the justices of the peace for the county of Bourbon, this day and date above written.

WM. M. BAYLOR, J. P.

Saturday, April 11th, 1829.—Met at the house of Nicholas Smith, agreeable to adjournment.

[*Deposition of Michael Smith.*]

The deposition of Michael Smith, after being duly sworn, deposeth and saith: That some time in the year 1797, his brother, Nicholas Smith, purchased about two hundred acres of land of Jacob Swope, and shortly after, in the same year, commenced clearing ground thereon. This deponent further states, that the said Nicholas Smith, some time early in the spring, 1798, purchased fifty acres of land, of John Jones, adjoining the above named 200 acres, and immediately settled on it, and continued in possession of said land until his death, and was buried in his orchard, and that possession has continued in his son, Nicholas Smith, until this time. And further this deponent saith not.

MICHAEL SMITH.

The deposition of Rudolph Mock, taken at the same time and place, and for the same purpose: He, the deponent, being duly sworn, deposeth and saith, that John Jones settled on and improved a piece of land, containing about fifty acres, some time in the year 1790, and continued in possession of the same until he sold it to Nicholas Smith. This deponent further states, that he understood that, some time in the year 1797, Nicholas Smith did purchase two hundred acres of land from Jacob Swope; and that shortly after he employed a man by the name of Richard Hays, to clear a part of said ground. This deponent further states, that Nicholas Smith moved to and settled on the land he bought of John Jones early in the spring, 1798, and continued in possession of the same, and the 200 above named, until his death, and was buried in his orchard, and still continues in possession of his son, Nicholas, until this time. And further this deponent saith not.

RUDOLPH MOCK.

[*Deposition of Henry David.*]

The deposition of Henry David, taken at the same time and place, and for the same purpose: He, the deponent, being duly sworn, deposeth and says, that he recollects of a certain John Jones who lived where Nicholas Smith now resides, and that Nicholas Smith, the father of the present residenter (Nicholas his son) purchased fifty acres of said Jones; that previous to said purchase Nicholas Smith the elder purchased two hundred acres

of land from a certain Jacob Swope, some time in the year 1797. And shortly afterwards he, the said Nicholas, employed a man by the name of Richard Hays, to clear a part of said ground. This deponent further states, that Nicholas Smith moved to, and settled on, the land he bought of John Jones, early in the spring, 1798, and continued in possession of the same and two hundred acres above named until his death, and that he was buried in his own orchard, and that said land still continues in possession of said Nicholas until this time. And further this deponent saith not.

HENRY DAVID.

Bourbon county, to wit:

The foregoing depositions of Michael Smith, Rudolph Mock, and Henry David, were sworn to and subscribed this 11th day of April, 1829.

JAMES ROBINSON, *J. P. C. C.*

In the circuit court of the United States for the 7th circuit and district of Kentucky, between Thomas Boone's heirs, complainants, and William Chiles, &c., defendants. In chancery:

[*Jeremiah Boone's deposition.*]

The deposition of Jeremiah Boone, taken at the office of mayor in the city of Philadelphia, in Pennsylvania, on the 6th day of July, 1824, by answers to the following interrogatories, to be read as evidence in the foregoing suit, to wit:

1st. Did or did not Josiah Boone and Hezekiah Boone, as surviving executors of their deceased father, George Boone, on the 9th November, 1795, appoint you their agent and attorney in fact by written power of attorney of that date, to transact all their business relative to lands in Pennsylvania, in which R. Peters was in some way concerned? If so, state all the fact connected therewith, and relative thereto.

2d. Did you or not at any time, either prior or subsequent to the 30th November, 1802, see or know of any written authority from Hezekiah Boone to Thomas Boone, authorizing the latter either to sell lands or other property in Pennsylvania, or to receive money arising from the sales of any property in Pennsylvania, in discharge or part discharge of a debt due by Hezekiah Boone to Thomas Boone, for lands in Kentucky, conditionally sold by Thomas Boone to Hezekiah Boone, or did you ever pay Thomas Boone any money for that purpose, under or by virtue of your agency from Hezekiah Boone? State all you know on the subjects contained in this interrogatory.

3d. In your agency for Josiah and Hezekiah Boone, were you or not authorized to sell lands, or were you merely directed to receive the money arising from the sale? Did you or not ever receive any money under or by virtue of your agency? If so, how much, and what disposition did you make of it? State all you know on this subject.

4th. Did or not Thomas Boone ever receive any money from you as agent for Hezekiah Boone, in discharge or part discharge of a debt due by Hezekiah Boone to Thomas Boone, for

land on Licking waters, in Kentucky, sold or conditionally sold by the latter to the former?

5th. Have you or not seen a conditional contract for the sale of the Kentucky lands on Licking, made between Thomas and Hezekiah Boone? If so, state whether the legal title to the Pennsylvania lands therein referred to as a fund for payment or part payment of the Kentucky lands was or not vested in R. Peters.

6th. Do you or not know, that prior to the 30th November, 1802, Josiah Boone sold all his interest in and to the Pennsylvania lands aforesaid, to George Boone, Berk's county, Pennsylvania?

7th. Do you or do you not know of Thomas Boone's receiving a letter from Hezekiah Boone, dated December, 1809, informing Thomas Boone of his, H. Boone's, inability to comply with the conditional contract for the Kentucky lands, and requesting Thomas Boone to come to Kentucky and attend to his own land business, as he, Hezekiah Boone, would have nothing more to do with them? State all you know of the letter and its contents.

A copy. Test:

JOHN H. HANNA, *C. C. C. K. D.*

[L. S.] The United States of America, to any two justices of the peace, notary public, or mayor of any city, gentlemen, greeting:

Know ye that we, trusting to your fidelity and provident circumspection in diligently examining Jeremiah Boone, jr., witness for Thomas Boone's heirs, in a certain matter of controversy now depending in our seventh circuit court of the United States, in and for the Kentucky district, wherein said Thomas Boone's heirs are complainants, and William Chiles and others are defendants: We command you, that at such certain days and places as you shall appoint, you assemble yourselves together, and the witness aforesaid. You shall call and cause to come, and him diligently examine on oath, touching the premises; and his examination into our said court, distinctly and plainly, without delay, you shall send and certify, enclosed; returning also to us this writ.

In witness whereof, John Marshall, esq., chief justice of the Supreme Court of the United States, hath caused the seal of our said court to be hereunto affixed, this 7th day of May, 1824, and of our independence the 48th.

Attest: JOHN H. HANNA, *C. C. C. K. D.*

To the honorable the judges within named, I do certify, that in obedience to the within writ, after having called the within named Jeremiah Boone before me, I did diligently examine him on his solemn affirmation (he being conscientiously scrupulous of taking an oath) touching the matters within specified, by causing him to make answers to the interrogatories hereunto annexed, this sixth day of July, A. D. 1824, which answers are plainly and distinctly set forth in the schedule hereunto also annexed. So answers

JOSEPH WATSON,
Mayor of the city of Philadelphia.

City of Philadelphia, in the State of Pennsylvania, ss.

Be it remembered, that on the day of the date hereof, before

me, the subscriber, mayor of the city of Philadelphia, in the commonwealth of Pennsylvania, personally came and appeared Jeremiah Boone, of the said city, a witness on the part of the plaintiffs, in a certain suit or action depending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein Thomas Boone's heirs are complainants, and William Chiles, &c., defendants, in chancery. And the said Jeremiah Boone, being conscientiously scrupulous of taking an oath, was duly affirmed according to law; and on his solemn affirmation, he did declare and say, that the following answers to the interrogatories hereunto annexed were just and true to the best of his knowledge and belief.

Answer to the first interrogatory. They did.

A true copy of the letter of attorney or authority is hereto annexed, marked A.

Answer to the second interrogatory. I never saw, knew, or heard of any such authority; nor did I ever pay any money for any such purpose as is stated in this inquiry.

Answer to the third interrogatory. The power of attorney above referred to states distinctly my authority, its extent and limits. I received $744 83, and disposed of the same as follows, viz.:

Commissions and other charges - - - -	$48 83
Paid to Hezekiah Boone for self and Josiah Boone, on account - - - - - - - - -	287 46
Retained for my own share and my brother's, and the balance due H. B. and Jos'h Boone - - -	408 54
	$744 83

Answer to the fourth interrogatory. Not one cent, nor its value in any way.

Answer to the fifth interrogatory. I saw such an agreement, but not until after the death of my brother, Thomas Boone, I think in December last. The legal title to the lands referred to in this interrogatory was and is vested in Richard Peters.

Answer to the sixth interrogatory. Two instruments of writing, dated 13th March, 1798, signed Josiah Boone, and witnessed by Isaac Lee and William Lee, were given to me by my brother, George Boone, of Berks county, Pennsylvania, *many years since*; one was a receipt for eighty dollars in payment of his, Josiah Boone's, share of the partnership business with Richard Peters; the other was an order for me to pay the money arising therefrom to George Boone. Copies are hereto annexed, marked B and C. This is all I know on the subject.

Answer to the seventh interrogatory. Many years ago, Thomas Boone informed me that he had received a letter from Hezekiah Boone, informing him of his inability to comply with the conditional contract for the sale of his Kentucky lands, and requesting him to come and attend to the business himself.

JER. BOONE.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said city to be hereunto affixed. Done at Philadelphia, this sixth day of July, A. D. 1824.

JOSEPH WATSON, *Mayor*.

A.

[*Josiah and Hezekiah to Jeremiah Boone—power attorney.*]

To all people to whom these presents shall come: We, Josiah Boone, of Culpeper county, in the State of Virginia, yeoman, and Hezekiah Boone, of the county of Washington, in the territory southwest of the River Ohio, iron master, but at present being in the city of Philadelphia, (the only surviving executors named in the last will and testament of George Boone, late of Exeter, in the county of Berks, in Pennsylvania, esquire, deceased,) send greeting:

Know ye, that we, the said Josiah Boone and Hezekiah Boone, as surviving executors aforesaid, for divers good causes and considerations us hereunto moving, have, and by these presents do nominate, constitute, appoint, and authorize, and in our and each of our steads and places put and depute Jeremiah Boone, of the city of Philadelphia, in the State of Pennsylvania, merchant, to be our true and lawful attorney for us and each of us, and in our and each of our names, and in our behalf, to ask, demand, and require, sue for, recover, and receive of and from the executors or administrators, and of and from the legal representatives of Richard Peters, late of said city of Philadelphia, gentlemen, deceased; and, also, of and from the present Richard Peters, of the same city, esquire, and all and every person and persons whom it may concern, all such debts, duties, sum and sums of money, as all other demands whatsoever, which now are, or hereafter shall be due, and payable to us as surviving executors of the last will and testament of the said George Boone, deceased, or otherwise howsoever by or in consequence of any contract, covenant, or agreement whatsoever, which the said George Boone may have entered into in his life time; and, also, for us, and in our names, and on our behalf as surviving executors of the last will and testament of the said George Boone, deceased, or otherwise to ask, demand, and require, sue for, recover, and receive, of and from all manner of person and persons whatsoever, all such debts, duties, sum and sums of money, and all other demands whatsoever, which now are or hereafter shall be due to the estate of the said George Boone, deceased, and payable to us as executors of his last will and testament, by any manner of ways and means howsoever, and to liquidate, settle, and adjust all accounts, reckonings, transactions, dealings, and demands, touching or concerning the estate of the said George Boone, deceased, and to have, use, and take all lawful ways and means in our names as executors aforesaid, or otherwise for the recovery thereof, and of every part and parcel thereof, and to sue, implead, and make answer, prosecute, or defend, in any court of law or equity, and before any judges or justices, or other person or persons in any suit, action, matter, or cause whatsoever, and to deal and intermeddle in any actions, suits, affairs, and business any way concerning us as surviving executors of the last will and testament of the said George Boone, deceased, or otherwise as our factor, agent, or attorney, and to institute suit in our names as surviving executors aforesaid, and to prosecute the same to final effect, and to do all other lawful acts, matters, and things necessary for the final set-

tlement of all accounts and demands concerning the estate of the said George Boone, deceased, and for the obtaining, recovering, and receiving of all the debts, dues, and demands due to the same estate, and payable to us as surviving executors of his last will and testament, as well from the estate of the said first named Richard Peters, gentleman, deceased, and from the said present Richard Peters, esq., of Philadelphia aforesaid, as from all and every other person and persons whatsoever, giving and hereby granting to our said attorney, our full and whole power and authority in the execution and performance of all and singular the premises, and to make any composition or agreement for or concerning the premises, and to make, seal, and deliver, any discharge or acquittance for us, and in our names, as executors aforesaid, or otherwise, as shall be requisite, and other attorney or attorneys, under him to make, and at his pleasure to revoke, and generally to do, determine, and execute, and all such further and other lawful and reasonable act and acts, device and devices, whatsoever, which in and about the premises shall to my said attorney seem fit and necessary to be done for effectuating the purposes of this our present power and authority, as fully and amply as we ourselves might or could do if we were personally present, ratifying, allowing, and by these presents confirming all and whatsoever our said attorney, or his substitutes shall lawfully do or cause to be done by force and virtue hereof. In witness whereof, we have hereunto set our hands and seals, this ninth day of November, in the year of our Lord one thousand seven hundred and ninety-five.

Signed, JOSIAH BOONE, [L.S.]
HEZEKIAH BOONE, [L.S.]

Sealed and delivered by Josiah Boone, in the presence of us,
Signed, PHILIP LIGHTFOOT, jr.
WM. THORN.

Sealed and delivered by Hezekiah Boone, in the presence of us,
Signed, JOHN SMITH,
DANL. SHUTE.

The tenth day of November, anno Domini, 1795, before me, the subscriber, one of the judges of the court of common pleas for the county of Philadelphia, came the above named Hezekiah Boone, and acknowledged the foregoing instrument of writing, procuration or letter of attorney, to be his act and deed, and desired the same may be recorded as such. Witness my hand and seal the day and year aforesaid.

(Signed) ISAAC HOWELL, [SEAL.]

The twenty-third day of November, anno Domini, 1795, before me, the subscriber, one of the justices of the peace for the county of Culpepper, came the within named Josiah Boone, and acknowledged the foregoing instrument of writing, procuration or letter of attorney, to be his act and deed, and desired that the same may be received as such. Witness my hand and seal the day and year aforesaid.

(Signed) EDWARD STEVENS, [L. S.]

State of Virginia, Culpepper county, to wit:

I, John Jamison, clerk of the court, for the said county, do hereby certify, that Edward Stevens, gentleman, whose name is subscribed to the above certificate of acknowledgment, is a justice of the peace in and for said county, and that full faith and credit is due to all his official acts.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said county, this twenty-third day of November, [L. s.] 1795, and in the twentieth year of American independence.

(Signed) JOHN JAMESON, *Ct. Cur.*

Inrolled in the Rolls office, for the State of Pennsylvania, in the letter of attorney book, No. 5, page 227, &c. Witness [L. s.] my hand and seal of office, the 7th day of December, 1795.

(Signed) MATH. IRWIN.

I, Nicholas Diehl, jr., notary public, for the commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the city of Philadelphia, in the said commonwealth, do hereby certify and attest, that the foregoing power of attorney, together with the several attestations thereto, are true and exact copies of the originals to me produced, and by me compared and found to agree therewith, word for word, and figure for figure.

Quod attestator, NICH'S DIEHL, jr.,
Notary Public.

B.

[*Josiah Boone to George Boone, receipt.*]

To all people to whom these presents may come: Josiah Boone sendeth greeting: Know ye, that I, Josiah Boone, senr., of Culpepper county, and state of Virginia, do hereby acknowledge to have received of George Boone, of Berks county, and State of Pennsylvania, the just and full sum of eighty dollars, lawful money of the United States of America, in consideration and full payment for my right, title, interest, property, claim and demand, whatsoever, that I now have, or ever had, to all lands by right of my father, George Boone, deceased, held in partnership with Richard Peters, of the city of Philadelphia, deceased, his heirs, executors, administrators or assigns, (now unsold, and all moneys due or to become due, for land sold, that belonged to the said partnership, that did belong or doth yet belong to me) as also all the rents, issues and profits thereof; and further, I request Jeremiah Boone, of the city of Philadelphia, to pay all such sum or sums of money, that are, by law or equity, due or to become due to me, in any wise respecting the partnership business as aforesaid, and also to confirm to the said George Boone, by deed or any other instrument of writing, necessary for insuring the said George Boone, his heirs, &c., as fully as I ever could myself, in full right to him, the said George Boone, his heirs and assigns for ever, he, the said Jereh. Boone, being legally authorized so to do, by a power of attorney, which I here, by these presents, make irrevocable, to all intents and purposes, and, as a further testimony that the within receipt, order, &c., is meant as a full consideration of payment and that the said

George Boone, may by the request be placed secure in standing from the day of the date exactly in my place, as to all my right, &c. whatsoever, with the said Peters, his heirs, &c. In witness whereof, I have hereunto set my hand and subscribed my name the 13th of March, 1798.

Signed, JOSIAH BOONE.

In presence of

Signed, ISAAC LEE,
WILLIAM LEE.

C.

[*Order from Josiah Boone, to Jereh. Boone, in favor Geo. Boone.*]

Cousin Jeremiah Boone:

Please to pay to George Boone all such sum or sums of money that, by law or equity, I am entitled to, either in thy hands or Richard Peters, esq.; and also confirm to the said George Boone, by deed or any other instrument of writing, that shall or may be esteemed necessary, to place the said George Boone, his heirs and assigns, in all my right, title, property, interest and claim, both real and personal, that I have in right of my deceased father's estate, with the estate of Richard Peters, deceased, his heirs, executors, administrators or assigns, and that the said George Boone's receipt, shall be thy release and full discharge, from thy uncle Josiah Boone, his heirs and assigns, for ever, and the power of attorney, I hereby declare, to be by me from this date irrevocable, that I give thee. In witness whereof, I have set my hand and subscribed my name the thirteenth day of March, A. D. one thousand seven hundred and ninety-eight.

Testes. (Signed) JOSIAH BOONE.

Signed, ISAAC LEE,
WILLIAM LEE.

I, Nicholas Deihl, jr., notary public for the commonwealth of Pennsylvania, by lawful authority duly commissioned and sworn, residing in the city of Philadelphia, in the said commonwealth, do hereby certify and attest, that the foregoing instruments of writing are true and exact copies of the originals to me produced, and by me compared and found to agree therewith, word for word, and figure for figure.

Quod Attestator, NICH'S. DEIHL, jr.
Notary Public.

[*Depo. Thos. Arnold.*]

The following deposition of Thomas Arnold was this day taken at the office of John G. Martin, in Paris, to be read as evidence in a suit in chancery, now depending in the district court of the United States, for the district of Kentucky, wherein Boone's heirs are complainants, and William Chiles and others are defendants: The deponent being first sworn, says, he is, and for a great number of years has been, the clerk of the Bourbon circuit court; that there is a suit in chancery now depending in the Bourbon circuit court, wherein William Chiles and others are complainants, and Hoy's heirs and devisees are defendants. He says, that during the May term of the Bourbon circuit court, 1820, as he thinks, he met William Chiles on the street, and they had some conversation. Chiles told this deponent to be very particu-

lar and careful of the bond in the papers, executed by Reuben Searcy to William Hoy, and which by assignment had come to Thomas Boone. That Chiles told him the reason he wished him to be careful, was, that Hugh Brown, one of the defendants was in town, and if he got hold of it, it would be gone. That shortly afterwards this deponent went to the court house, and just as he had got to the clerk's table, Chiles again met him, and told him the bond was gone sure enough. This deponent told him he could not tell; and that he had not seen Brown; and he must ask the young men of the office. The reason he is satisfied it was at the May term, 1820, that conversation took place, is, that he finds among the papers of said suit a supplemental bill, setting up that bond; which bill was sworn to and filed at that term, as appears by the indorsements of this deponent upon it. This deponent states, that the said Chiles at the time named the bond, and that it was of great importance, and cautioned him to be on his guard. Yet, from the lapse of time, he cannot say that it was a bond from Searcy to Hoy, but he states that the subject of the bond was on the same day agitated in court; and from the circumstances of finding a supplemental bill filed and sworn to in open court, and so endorsed in the hand-writing of this deponent, as clerk of said court, in which the bond from Searcy to Hoy is set up as the one lost, and the copy prayed to be substituted, he has no doubt of its being the same bond, named by Chiles; nor has he any doubt this conversation passed at the May term in the year 1820, from the circumstance aforesaid. This deponent further states, that at the moment of Chiles' mentioning that the bond was gone or lost, this deponent assured him he had not seen or heard of Brown's being in town, and that if he had examined the papers and got hold of the bond, it must have been from his deputies or one of them, *or one of them.* And he says one or both of his deputies were present; and feels confident John S. Bowling and James Arnold, junior, were his deputies at the time; and that one or both of said deputies, who were present, declared they had either not seen said Brown, or if they had seen him, he had not had access to the papers, or bond, or words to that effect. This deponent being interrogated says, the said John S. Bowling lived in his office, and acted as an assistant and deputy for the space of about four years, as well as he recollects, and that he ever considered him a young man of integrity, and entitled to entire credit in his official acts, or when on oath; and further this deponent saith not.

THO. ARNOLD.

Bourbon county, sct.

The foregoing deposition of Thomas Arnold was this day taken, subscribed, and sworn to before me, a justice of the peace in and for said county at the office of John G. Martin, in Paris. Given under my hand, this 29th day of November, 1828.

HENRY TIMBERLAKE.

[*Deposition of Z. Eastin.*]

The following deposition of Z. Eastin was this day taken at the office of John G. Martin in Paris to be read as evidence in a suit in chancery, now depending in the federal court for the district of Kentucky, wherein Boone's heirs and claimants, and Chiles

and others are defendants. The deponent being of lawful age, and first duly sworn, says in answer to interrogatories: first, About what time did Peter Smelser take possession of the 400 acres tract of land, mentioned in the plat of land returned by you in this case? Has the possession been continued by him, and those claiming under him until this time? Are Peter Smelser and wife dead, and buried on the land? Answer. As near as I can recollect, Smeltser took possession of the 400 acre tract in 1789; but as to the exact time, I cannot be certain. My understanding is that Smeltser, and those claiming under him, have held possession ever since. The old lady is yet living, as I am informed, but Peter Smelser has been dead many years, and is buried on the land.

2d. About what time did Nicholas Smith take possession of the 200 acres purchased from South, and 50 acres purchased from John Jones, as laid down in said plat? Has the possession been continued by him and those claiming under him ever since he first took possession? Are Nicholas Smith and wife dead and buried on the land? Answer. As nearly as I can recollect, Nicholas Smith took possession of the land where he resided and died between the years 1795 and 1797. The possession has been held by him, and those claiming under him, ever since. I have understood he and his wife are dead and buried on the land.

3d. Are Reuben Searcy, William Hoy, George Boon, John South, Jacob Swope, and George Pope still living, or have they long since been dead? Answer. I never saw any of them. From reputation I believe Searcy and Hoy are dead, and South; of the others I know nothing, not even from reputation. As a further answer to the second interrogatory, he says he thinks Smeltser's improvements are worth $1,500. The improvements of South on the land now in contest in this suit he thinks are worth $700.

Question by Boone's heirs. Will you state whether the 50 acres mentioned above, are within any part of the 700 acres now in contest in this suit, and are or not the 50 acres a part of Flournoy's claim? Answer. The 50 acres form no part of the 700 acres in contest in this suit, and lie in Flournoy's claim. On further reflection, and on examination, I find the 50 acres aforesaid, interfere with the 700 about 10 acres. He states, also, that he made the former survey, and he believes the division, but probably his son, H. J. Eastin run the division line and some others.

By same. What do you suppose the rents of the Smeltzer tract of 400 acres to be worth since Smeltser took possession to this time? And has not great waste been committed upon the timber, and to what amount? Ans. I know not what it would be worth, but would say it was worth $2 an acre, by the year. There has been great waste committed upon the timber, but to what amount I know not. By same. Will you state whether the rent on Smith's land is worth about the same by the acre, per year, as Smeltzer's? Answer. It is worth about the same, and there has been some waste of timber upon Smith's land, but not so much as on Smeltzer's. By same. How much does Flournoy's claim interfere with the 700 acres now in contest? Answer. About 35 acres. By same. Has not the land now in contest, been twice surveyed before, since the pendency of this suit, and to be used as evidence

in this suit; and is not the present survey variant from the two former surveys aforesaid? Answer. The present is the only survey made since the pendency of this suit; but it was once surveyed before this suit, and afterwards divided under a decree of the Bourbon circuit court, in the case of Chiles, &c. *vs.* Hoy's heirs. The present survey is variant from the former survey, owing to a difference in the measurement; and further saith not.

Z. EASTIN.

The foregoing deposition was this day taken, sworn and subscribed at the office of John G. Martin, in Paris, before me a justice of the peace in and for Bourbon county, to be used as evidence in the suit specified in the caption of this deposition. Given under my hand this 2d May, 1824.

HENRY TIMBERLAKE.

[*Deposition of Benjamin Mills.*]

The deposition of Benjamin Mills, esq. taken at the office of Henry Wingate, in Frankfort, on the 27th day of November, 1828, agreeably to the annexed notice, to be read as evidence in a suit in chancery, depending in the circuit court of the United States, in and for the district of Kentucky, wherein Boone's heirs are complainants, and Chiles, &c. are defendants.

This deponent, being of lawful age, and first duly sworn, deposeth and says: Question by James Haggin, esq. counsel for the complainants. Did you or not, know Thomas Boone of the State of Pennsylvania, now deceased? Answer. I never was personally acquainted with said Boone, and never saw him to my knowledge; I have often heard of him by name and from character; as well from his relations as others, and understood he lived in Pennsylvania, and heard of his death there. By same. Have you ever corresponded with him by letter? Answer. I never received a letter from him or sent one to him, as far as my recollection serves me. By same. Have you ever seen a letter of attorney, or instructions from Thomas Boone to George Boone, or to any other person in Kentucky in relation to his land claim, on Stoner, in Bourbon county, patented in the name of Hoy, assignee of Searcy? Answer. I have seen either the original letter of attorney, as it purported to be, or the copy, I am not positive which, from Thomas Boone to George Boone, who was said to be his brother, and also writings, purporting to be a contract between him and Hezekiah Boone, and I may have seen other writings touching his land claims, but none that I could now say wore the form of instructions, and I did not personally know that any of them were genuine. By same. Did you prepare the bill in chancery in the name Thomas Boone, George Boone, and others, in the Bourbon circuit court, against Hoy's heirs and others, and were any of the allegations made upon the suggestion of Thomas Boone? Answer. My deposition was previously taken in this cause, in which I have been questioned on this subject as well as on other points in the cause. I then aswered this inquiry, with others, as explicitly as I could, consistent with what I understand to be my duty with others for whom I was once employed as counsel, touching the lands which I am told are now in dispute, and I must refer to my former deposition, for as full an answer to this

question as I can now give. By same. Do you know that Thomas Boone was apprized of the pendency of that suit before its determination in the circuit court? Answer. I do not know that he was, although I supposed he was, and this supposition has been strengthened by facts which have transpired since, and these facts are, that Boone Ingles, esq. who professed to act as agent for said Thomas Boone in his life, and James Haggin, esq. who acted as counsel for Thomas Boone, seemed to take an interest in favor of the claim. While it was pending in the appellate court, I have heard Mr. Ingles express a wish for its affirmance, and a regret at its reversal, and Mr. Haggin appeared as counsel in that court professedly as the counsel of Thomas Boone's heirs, in favor of the affirmance of the decree. By same. Do you mean to say, that from the circumstance of James Haggin's appearing in support of a decree in the court of appeals, you think it at all probable that Thomas Boone was apprized of the progress of the suit in the circuit court, during its pendency? Answer. The idea I communicated in the last answer, or intended to communicate, was this, that from Mr. Haggin's appearing expressly professing himself as the counsel for Thomas Boone and his heirs, and also Mr. Ingles, who I believed to be agent for them, employing counsel, and expressing a wish for the affirmance of the decree when it was assailed, I inferred that I was right in the supposition that Thomas Boone knew of its pendency, and that inference was drawn from their approbation and wish to sustain the decree after it was rendered. By same. Whenever Boone Ingles has conversed with you on this subject, has he or not, always disavowed any knowledge of the progress of the suit in the circuit court on the part of Thomas Boone? Answer. I cannot say that he did in any conversation make such disavowal, nor do I remember of his intimating such a disavowal but once, and that was at the time he presented the interrogatories to take my deposition, and perhaps after my deposition was taken. I then understood that he wished to prove that Thomas Boone had no knowledge of the pendency of that suit in the Bourbon circuit, but at the same time, I knew he was taking measures to sustain the decree if possible. By same. However great a stranger Thomas Boone might have been to the progress of the suit, in the circuit court, having instituted suit against Chiles as holding the legal title, do you not think that the inconveniences resulting to Boone by the reversal of the decree, would afford a sufficient motive with Thomas Boone in opposing the reversal of that decree? Ans. On the supposition that Thomas Boone was a stranger to that suit in Bourbon, during its pendency, there might exist motives for his approbation of and wish to sustain the claim afterwards; but I am not well enough acquainted with the record in this case, or with the interest of him and his heirs, to say whether such motives existed or not. By same. Have you any other reasons than those above given, for supposing that Thomas Boone was privy to that suit? Ans. I have not detailed the reasons or any of them, why I supposed, during the pendency of that suit in the Bourbon circuit court, he had knowledge of its pendency; I have only detailed the facts which since transpired, and which has since strengthened my once existing supposition or belief

To detail the previously existing reasons for my former supposition, would lead to a disclosure of matters communicated to me in professional confidence, before, at the commencement and during the progress of that suit in Bourbon, in which I was counsel, and which I have declined relating. By same. Please state what you know of the defendants holding under Thomas Boone or Chiles since the recovery in ejectment in the Bourbon circuit court, in the name of Chiles and others; speak particularly of Evault? Ans. After I had obtained judgment in that suit, I was told by my clients, as well as understanding it from some of the tenants, that all of them had accommodated and made some agreement for the land, which, if complied with, was to suspend the execution, and I was not to push the execution. This I understood to be the case with all the tenants, except a piece held by Nicholas Smith, and with Evault as well as the rest. But I do not remember of understanding this from Evault himself. And further saith not.

B. MILLS.

Franklin county, sct.

The foregoing deposition was this day taken, subscribed and sworn to, before the undersigned, a justice of the peace for said county, at the time and place, and for the purposes mentioned in the caption thereof. Given under my hand this 27th day of November, 1828.

H. WINGATE, J. P.

[*Deposition of John S. Bowling.*]

The deposition of John S. Bowling, taken before us, Cyrus Wingate and John Brown, two of the justices of the peace, in and for the commonwealth of Kentucky, and county of Owen, being by virtue of our commissions two of the judges of the county court, in and for the county aforesaid, duly commissioned and sworn, acting as such, taken on the 11th day of March, in the year 1828, at the house of William Bowling, in the county aforesaid, to be read as evidence in a certain suit depending in the court of the United States in and for the seventh circuit and Kentucky district, holden in Frankfort; wherein Thomas Boone's heirs are complainants, and William Chiles and others, defendants: The said deponent being first duly sworn and cautioned to depose the whole truth, doth depose and say, that he resides in the said county of Owen, and that he is very infirm and unable to attend the said court, and furthermore saith that the following is a true copy of a bond, dated 24th Sept. 1781, executed by Reuben Searcy to William Hoy, and by him assigned to George Boone, and by him assigned to Thomas Boone, and by me copied by order of the Bourbon circuit court, and is in the words and figures following to wit:

"Know all men by these presents, that I, Reuben Searcy, of the county of Fayette, am held and firmly bound unto Wm. Hoy, of the county of Lincoln and State of Virginia, in the penal sum of fifty thousand pounds, current money of Virginia, to which payment, well and truly to be made, I bind myself, my heirs, executors and administrators, unto the said William Hoy, he, his heirs or assigns, this twenty-fourth day of September, one thousand seven hundred and eighty-one.

The condition of the above is such, that if the above bound Reuben Searcy, shall well and truly make, or cause to be made, as soon as deeds is made to lands in this country in general, a good and sufficient deed for seven hundred acres of first rate land lying in Fayette county, on Licking creek, betwixt John Martin's station and Ruddell's station, it being a part of a settlement and pre-emption that John Martin cleared out on the halfs for said Reuben Searcy, and the said Hoy takes his first choice of the land; then the above obligation to be void, otherwise to be and remain in full force and virtue.

(Signed,) REUBEN SEARCY. [L. S.]

Signed, sealed and delivered,
in the presence of us,
JESSE CARTWRIGHT,
CALEB CALLOWAY.

A copy. Attest:

JNO. S. BOWLING, D. C. B. C. C.

The following are the endorsements on the foregoing bond, to wit: "I, William Hoy, assign over the within bond, unto George Boone, his heirs or assigns, and said Hoy obliges himself, his heirs, executors and administrators, as *shourety* to within bond, and if the within lands cannot be obtained by prior claim, then, and in that case, seven hundred acres, equal in quality and convenience shall discharge the within bond. Witness my hand, this 15th day of December, 1781.

(Signed,) WM. HOY.

Test:
JOHN TURNER,
NATH'L. HART.

I do hereby assign over all my right, title and claim of the within bond, unto Thomas Boone, his heirs or assigns, without recourse to the same; that is to say, that I, the said George Boone, am no ways obligated, if the said William Hoy or his heirs sufficient to make good the within bond; but if the said William Hoy, or his heirs, should not be able, then I, George Boone, do bind myself, my heirs, to make good the same unto the said Thomas Boone or his heirs or assigns. Witness my hand, this 30th day of April, 1783.

(Signed,) GEO. BOONE.

Teste:
WILLIAM HUNTER.
Att: JNO. S. BOWLING, D. C. B. C. C.

Quest. by complainant. Is or not the bond dated 24th September, 1781, executed by Reuben Searcy to William Hoy, and by him assigned to George Boone, and by him assigned to Thomas Boone, and by you copied by order of the Bourbon circuit court, a copy of the original bond? Answer. I think it is. Quest. by same. Was or not the bond lost or stolen out of the clerk's office of the Bourbon circuit court, shortly after you understood Thomas Boone was about to investigate his right to the said land and bond? Ans. I do not recollect ever to have seen Thomas Boone, nor did I ever know any thing about his intention to investigate

the claim alluded to; but I have no doubt but the original bond from Reuben Searcy to William Hoy, was given out of the office to William Chiles, as there is a memorandum on the back of the copy of the original bond in my hand writing, which is this day shown me, and copied by me while I was a deputy clerk of Bourbon circuit court.

Quest. by same. Detail all you know on the subject, in relation to said bond, and its loss. Ans. I believe the copy which is inserted in this deposition to be a true copy of the original bond alluded to, and can account for the absence of the original bond from the office of the Bourbon circuit court in no other way than that the original was given out of the office to William Chiles by order of the Bourbon circuit court, as per endorsement on the copy before alluded to; and further this deponent saith not.

JNO. S. BOWLING.

We, Cyrus Wingate and John Brown, two of the justices of the peace in and for the county of Owen, in the State of Kentucky, duly commissioned and sworn, and acting as such, and by virtue of our said commissions, being two of the judges of the county court, in and for said county, do certify, that at the request of the plaintiff in said suit, we caused the deponent in the foregoing deposition to come before us at the time and place stated in the caption, because the said witness is infirm and unable to attend the said court; that we did not cause any notification to be given to the adverse party of the time and place, so as to be present at the taking of the same, because the adverse party did not reside within one hundred miles of the place of taking the same, and had no agent or attorney known, within that distance of the said place stated in the caption; the said witness was by us carefully examined, cautioned and sworn, then and there to testify the whole truth; the said deposition was wholly reduced to writing by us, in presence of said witness, then and there, and subscribed by him in our presence: that we, nor either of us, are not of counsel or attorney to either of the parties, or interested in the event of the cause; all which we do certify to said court, as the cause and manner whereof the said deposition was taken.

CYRUS WINGATE, J. P. O. C.
JOHN BROWN, J. P. O. C.

The within deposition of John S. Bowling is excepted to by defendants, for want of notice, because the defendants, many of them if not all, live within one hundred miles of the place of taking this deposition, as mentioned in the caption. 2d, It is irregular, and taken without authority. 3d, Because there is no evidence of the execution of the original bond by Searcy to Hoy, and of the assignments therein set forth, in the above deposition. 4th, Because the certificate of the magistrate is defective. 5th, Because the deposition proves only a copy of a copy, without the absence of the copy being sufficiently accounted for.

[*Interrogatories put to Thomas Ravenscrap, &c. by defendants.*]

In the circuit court of the United States for the seventh circuit and district of Kentucky,] between William Chiles, &c. *ads.*

Boone's heirs, chancery: The depositions of Thomas Ravenscrap, Humphreys Lyon, Abraham Kellar, James Arnold, Thomas Amory, James Clark, Isham Talbot, Benjamin Mills, John G. Martin, and others, by answers to the following interrogatories, by the defendants:

1st. Do you or not know any thing of a bond, said to be executed by Reuben Searcy to William Hoy, for seven hundred acres of land upon the waters of Stoner's fork of Licking, situated now in the county of Bourbon, being a part of a settlement and pre-emption entered and surveyed in the name of said Searcy, and patented in the name of William Hoy? If you know any thing of said bond, please to state all about it.

Question 2d. State, if you know, whether said bond was not assigned to John South, and whether said South had not the possession of said bond for a long time before his death, and after his death did the bond get out of his possession of his heirs? state also any other substantive fact that you may know concerning said bond.

Question 3d. State whether you know any thing of two bonds, executed by John South in his lifetime, for part of said land; one made and executed by John South, Walter Carr, and John Glover, bearing date the 3d day of December, 1791; the other executed by John South to Pope, who assigned it to Swope, who assigned it to Nicholas Smith. If you have any knowledge of said bonds or the assignments, please to state all you know about them.

Question 4th. Do you or not know that John South had sold the above mentioned land to Peter Smeltzer and to Nicholas Smith, long before the 3d day of December, 1791, but upon the last mentioned day the contract was renewed, and executed by the parties? State, if you know any thing the first contract, which was thus renewed and executed. Whatever substantive knowledge you have touching the above interrogatories, state it fully.

Question 5th. Do you not know by whom said land was settled and improved, and under whom improved, when improved, and by whom the possession has been held ever since? Please to state all you know about it.

Question 6th. *Do* are you or not acquainted with Thomas Brown? if so, please to state whether he ever was in Kentucky, and if he was, when was it, and where did you see him; and whether the said Thomas Boone has or has not been in Kentucky frequently? State all you know.

Question 7th. How far is Paris, in Bourbon county, Kentucky, from the aforesaid land; and is Paris or not situated upon the main limestone road; a county town and a place of considerable business and information? Please state all you know.

Question 8th. What is the value of the lasting and valuable improvements made upon the land now held by George W. Baylor and Nicholas and Jacob Smiths? If you know, please state.

Question 9th. Are you acquainted with a certain Boone Ingles? *is* so, please to state where he resides.

Question 10th. Do you or not know any thing of Boone Ingles having any claim to any part of the above mentioned land? if so, how much, and what means he obtained, and whether or not he

did or not ride from Paris, Kentucky, to Pennsylvania, make an investigating or speculating contract with said Boone to prosecute this suit at his, the said Boone Ingels, own proper costs and charges, freeing the said Thomas Boone from any costs whatsoever? State all you know about it.

Question 11th. Are you acquainted with John Smelser, Jacob Smelser, and Anna Maria Smelser? If so, state whether they are or not the children of Peter Smelser, deceased, and recognized by him as such in his will. State all you know.

[*Deposition William Johnson.*]

The deposition of William Johnson, taken in the county of Bourbon and State of Kentucky, in answer to certain interrogatories, filed in the circuit court of the United States for the seventh circuit and district of Kentucky, to be read as evidence in a suit in chancery now depending in said court, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants:

This deponent being of lawful age, and first duly sworn, deposeth and saith, as to the first, second and third interrogatories, he has no knowledge of; as to the fourth and fifth, the deponent says that he was well acquainted with John South, William Hoy, and Smeltzer. This deponent further saith, that he knew that Peter Smeltzer purchased the land in controversy from John South; that said Smeltzer improved the said land some time in the year 1786, and continued in possession of the same until he died; that he cleared and improved said tract of land, some time before he moved his family to it; that said deponent lived at that time in the neighborhood of Ruddell's mills for several years, and was well acquainted with the above circumstances; this deponent further states, that he knows that the widow Smeltzer and some of the heirs of Peter Smeltzer held the same tract of land in possession till within some three years since, at which time she sold the said tract of land to George W. Baylor, and put him in complete possession of the same, who holds the same, and continues to live on it until this time; as to the sixth interrogatory, he further states that he had no knowledge of Thomas Boone; as to the seventh interrogatory, he states, Paris is the county town of Bourbon county, situate on Stoner, and on the limestone road, and is considered a place of considerable business and information; as to the eighth interrogatory, this deponent further states, that the improvements thereon are valuable; as to the ninth and tenth interrogatory, he has no knowledge of; as to the eleventh interrogatory, he says he is well acquainted with John, Jacob, and Ann Maria Smeltzer, and that they were the children of Peter Smeltzer, deceased, and recognized as such in his will; and further this deponent saith not.

WILLIAM JOHNSON.

[*Deposition John Walton.*]

The deposition of John Walton, also taken at the same time and place, and for the same purpose, being of lawful age, after being first duly sworn, deposeth and saith, as to the first interrogatory and second interrogatory:

Ans. I have no recollection about it. As to the third and fourth interrogatory, this deponent was with James Robinson and Jones, as one of the commissioners, chosen by the heirs of Peter Smeltzer, deceased, agreeable to his will, to make partition of the lands of said deceased, but he does not recollect positively from whence they got the metes and bounds of said land; there was conversation at that time with the heirs about South and Hoy's, but as to the bonds I cannot say positively whether they were showed to us at that time or not, as it is about twenty years past since we divided the said land. Fifth interrogatory: I moved to this State in the year 1792; the Smeltzer family was living on the place where George W. Baylor now lives; the improvement appeared to have been made some time before; the Smelsers remained and continued in possession until said Baylor bought it, and took possession of said lands about three years past. Sixth interrogatory: Ans. As to Boone, I know nothing of him, of my own knowledge. Seventh interrogatory: Ans. Paris is about five miles from the Smelser farm, where the said George W. Baylor now lives; Paris is situated on the main limestone road, and is a place of considerable business.

Eighth interrogatory: Ans. As to the amount of the improvement, I cannot say but they are lasting and valuable.

Ninth interrogatory: Ans. I know Boone Ingles; he resides in Paris, Bourbon county, Kentucky, and follows the hatter's business. Tenth interrogatory: Ans. I know nothing. Eleventh interrogatory: Ans. I know them, and that they are recognised by Smelser in his will as his children; and further this deponent saith not.

JOHN WALTON.

[*Deposition of J. L. Stephens.*]

Also, the deposition of Joseph L. Stephens, taken at his own house, in the county of Bourbon, being of lawful age, and lawfully sworn, deposeth and saith, as to the first, second, third and fourth interrogatories, he knows nothing about the matters therein stated; but as to the fifth interrogatory, he answers and says, that to the best of his recollection, Peter Smelser removed his family to the place where George W. Baylor now lives, some time in the year 1790 or 1791, and that said Peter Smelser continued to reside there until his death, and his family, or part of them, his heirs at law, continued to reside there until the purchase of George W. Baylor, but as to the length of time which Nicholas Smith, sen. and Jacob Smith have had possession of that part of the land in controversy, which said Smiths now live upon and claim, I cannot say with certainty, but I recollect that Smith purchased of Jones, and settled where he or they now live, so soon as Jones moved away, and that Jones settled where the Smiths now live, about thirty, or between that and thirty-five years ago.

As to the sixth interrogatory: I never had any acquaintance with Thomas Boone.

As to the seventh interrogatory: I think Paris situated about five miles from the land in controversy, and is a county town and a place of considerable business.

As to the eighth interrogatory: The improvements are lasting and valuable, but I cannot say to what extent.

As to the ninth interrogatory: I am acquainted with Boone Ingles, and he lives in Paris, Bourbon county, and is a hatter by trade.

As to the tenth interrogatory: I know nothing except rumor.

As to the eleventh interrogatory: I was acquainted with John, Jacob, and Anna Maria Smelser, they were considered as children of Peter Smelser, deceased; and further this deponent saith not.

JOSEPH L. STEPHENS.

State of Kentucky, and county of Bourbon, to wit:

I, James Robinson, one of the acting justices of the peace in and for the county of Bourbon, and State of Kentucky, being by virtue of my commission one of the judges of the county court, a court of record in and for the county aforesaid, duly commissioned and sworn, and acting as such, do certify, that in pursuance to dedimus to me directed, with sundry interrogatories annexed thereto, commanding me to assemble together sundry witnesses therein mentioned, and others, and to cause them to be diligently and circumspectly examined in answer to certain interrogatories, to them by the defendants propounded, to be read as evidence in a certain matter of controversy now depending in the seventh circuit court of the United States, in and for the Kentucky district, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants, that I did on the 26th of April, 1826, by virtue of my office aforesaid, and in pursuance to the dedimus and interrogatories to me directed, cause to assemble and collect together in my presence in the county and State aforesaid, at the dwelling of Hugh Talbot, esq., William Johnson, John Walton, and Joseph L. Stephens, that I did then and there place before said witnesses in their presence, the dedimus and interrogatories aforesaid, and having first been duly sworn, carefully examined and cautioned, each of the aforesaid witnesses, severally and separately, then and there to testify the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories aforesaid to them propounded; that I did, at the request of William Johnson, one of the witnesses aforesaid, and in his presence reduce the whole of his deposition to writing, which being carefully done and read to him, he, the said William Johnson, did then and there sign his own proper name thereto; that the said John Walton, and Joseph L. Stephens, the other remaining witnesses, did each of them write separately their own depositions, and sign their own proper names thereunto. I further certify, that I am not of counsel nor attorney to either of the parties, or interested in the event of the case. All which I do certify to said court, as the cause and manner wherefore said depositions were taken.

Given under my hand and seal, this 26th day of April, 1826.

JAMES ROBISON, *J. P. B. C.* [L. S.]

[*Deposition of Wesley Williams.*]

In the circuit court of the United States for the seventh circuit and district of Kentucky, between Thomas Boone's heirs, complainants, against William Chiles and others, defendants. In chancery:

The deposition of Wesley Williams, taken at the law office of John H. Coleman, in the town of Paris, Bourbon county, Kentucky, on the 15th day of March, 1824, by answers to the following interrogatories, to wit:

Question 1. By complainant. Did you or not, in February, 1823, execute a subpœna in chancery on Hezekiah Boone, in the above mentioned case?

Answer. I did.

Question 2. By same. Did you or not at that time have a conversation with said Hezekiah, relative to the written contract which he had entered into many years since with Thomas Boone, concerning the purchase of said Thomas of 700 acres of land in the present county of Bourbon, being part of a tract of land patented in the name of William Hoy?

Answer. I had a considerable conversation with said H. Boone relative to said contract between himself and Thomas Boone.

3d. By same. In that conversation did or did not Hezekiah Boone inform you that he had not on his part complied with the contract, and that he had accordingly informed said Thomas Boone thereof by letter, and also that he was utterly unable to comply with said contract on his part, and that he considered it void.

Answer. H. Boone told me that he had not paid Thomas Boone any thing at all, and had declined taking the land, and wrote accordingly to Thomas Boone, and that he ever after considered the contract void, in consequence of his failing to make payment within four years named in the article between them.

4th. Did you or not take a written memorandum of the conversation that passed between you and the said Hezekiah at that time, and if you did, state it as explicitly as you can, what he then stated to you, and particularly if he did not inform you that before William Chiles became interested in Thomas Boone's claim, that he, Hezekiah, had informed him, said Chiles, that the conditional contract had not on his part been complied with?

Answer. On my return to Paris, I think about three days after the conversation, alluded to above, took place, I wrote down the substance of that conversation. H. Boone then stated that he considered the contract a conditional one, and that he had the privilege of relinquishing or confirming it within the term of four years from the date of it; and that on coming to the State of Kentucky, and ascertaining the difficulty in obtaining the land, he declined taking it, and that he told Chiles he considered himself as entitled to no interest in said land, in consequence or by virtue of the contract aforesaid, and that he informed Chiles that he had paid nothing for it, and had written to Thomas Boone accordingly, and that said Chiles knew that he had no interest in the land aforesaid; and he further stated, that he explicitly informed Chiles that if any suit was commenced, and any thing obtained, that it must be for Thomas Boone and not for himself, as he had no authority from Thomas Boone to bring suit himself,

nor to empower any other to do so. He also stated, that Thomas Boone must defeat Chiles in this suit, as Chiles had never derived any legal authority from said Thomas to obtain the land. He also stated in the conversation, that at the time he entered into the contract with Thomas Boone, said Thomas gave him an order to George Boone, his (Thomas') former agent in Kentucky, for the bond which he held on Reuben Searcy, for the land aforesaid, and that on coming to the State of Kentucky, he applied to said George for the bond aforesaid, and found that George Boone had cancelled the said bond with John South, and held South's bond for the same quantity of land elsewhere; and on finding the situation of the transaction, he then refused to take the papers of said George, but applied to South to ascertain what lands he could get in lieu of the other land, and then South showed him some lands in Fayette county, and proffered them in fulfilment of his agreement with George Boone, but on inquiring into the title of South's lands in Fayette, he found they were in dispute, and it was generally thought at that time, that South was insolvent. He stated also, that George Boone had no authority from Thomas Boone to make the transfer above, of Searcy's bond, and that if he had received South's bond from George Boone it would have released him from his responsibility to Thomas Boone; he frequently stated in the course of the conversation that he had no interest in, or pretensions to, the land in dispute, but that it belonged to Thomas Boone.

5th. Did or did not said Hezekiah state, in the same conversation, that he had informed Chiles that he, said Hezekiah, had not complied with said conditional contract, and that he had no interest in the land; and that, if Chiles brought a suit, it must be for the benefit of Thos. Boone?

Ans. He did.

6th. Had you or not a conversation with Isaiah Boone, the son of Hezekiah, the same day you conversed with his father Hezekiah?

Ans. His son, Isaiah, was occasionally and generally present during said conversation, which took place at the house of said Isaiah, and frequently joined in the conversation.

7th. State, substantially, the conversation with said Isaiah, and particularly, if he did or did not state that he and his father had no claim to the said land; and that, if Chiles had recovered it, that it was understood and agreed that it was for the benefit of Thomas Boone, and not his father?

Ans. Isaiah stated that they (that is, he and his father) had been at considerable expense and trouble in looking after the business in this State, Kentucky, which he thought ought to be remunerated; and further than that they had no claim or pretensions to the land, any further than as friends to Thomas Boone. They both stated that Hezekiah was to pay £700 for the land; and that there never was, directly or indirectly, one cent of it ever paid. Isaiah stated that the sum of seven hundred pounds was to have been paid in horses. They both further stated that they neither had any authority to make any contract with Chiles, and that Chiles was fully apprized of it. They both stated that they believed Thomas Boone was an honest man, and would not take any advantage of them, if he had even had it in his power to

do so; in the course of conversation, the time of their removal to Kentucky was alluded to, and it was believed by H. Boone. I think it was some years later than Isaiah thought it was; the conclusion, I think, was, that they moved from the State of Tennessee to this State about 1807. And further this deponent saith not.

WESLEY WILLIAMS.

Kentucky, Bourbon county, sct.

The foregoing deposition of Wesley Williams was taken, sworn, and subscribed to, before us, two of the acting justices of the peace for the county aforesaid, this 15th day of March, 1824.

HENRY TIMBERLAKE.
THO. JONES.

[*Interrogatories put to N. Hart by complainants.*]

Interrogatories propounded to Nathaniel Hart, a witness for the complainants in the case, to wit: Are you or not the son and executor of Nathaniel Hart, deceased; if so, have you examined the attestation of said Nathaniel Hart to a certain assignment, dated the 15th of December, 1781, purporting to be the assignment of William Hoy to George Boone on a bond, bearing date 24th September, 1781, executed by Reuben Searcy to William Hoy, for the conveyance of seven hundred acres of land between Martin's station and Riddle's station, it being part of the settlement and pre-emption that John Martin, deceased, cleared out on the halves for Reuben Searcy? Answer and say all you know on the subject.

THO. TRIPLETT, p. q.

A copy. Attest: JNO. H. HANNA, C. C. C. K. D.

The deposition of Nathaniel Hart, of lawful age, taken at the house of Nathaniel Hart, in Woodford county, on the 10th day of November, 1828, to be read as evidence in behalf of Thomas Boone's heirs, in a certain suit in chancery now depending in the 7th circuit court of the United States of America in and for the Kentucky district, wherein the said Thomas Boone's heirs are complainants, and William Chiles and others are defendants: This deponent, being first duly sworn, in answer to the foregoing interrogatory hereto annexed, says, that he is the son and executor of Nathaniel Hart, deceased; that he has seen and examined the attestation of Nathaniel Hart, deceased, to a certain assignment, bearing date the 15th day of December, 1781, purporting to be the assignment of William Hoy to George Boone; and, upon the said paper containing the said assignment, there is, by way of reference, marked the letter A, which said writing purports to be a bond, bearing date the 24th September, 1781, executed by Reuben Searcy to William Hoy, for the conveyance of seven hundred acres of land between Martin's station and Riddle's station, it being part of a settlement and pre-emption that John Martin cleared out on the halves for said Reuben Searcy. This deponent saith that he knows the hand writing of his said deceased father, and that he verily knows and believes the aforementioned attestation to be in the hand-writing, and the proper act of him the said Nathaniel, deceased. And further saith not.

NATH'L HART.

State of Kentucky, Woodford county, sct.

The foregoing deposition of Nathaniel Hart was this day taken, subscribed, and sworn to by the said Hart, at the time and place, and for the purpose stated in the caption thereof, before me, S. Whittington, a justice of the peace in and for the county aforesaid. Given under my hand, this 10th day of November, 1828.

S. WHITTINGTON, J. P. W. C.

In the circuit court of the United States for the seventh circuit, district of Kentucky, between Thomas Boone's heirs, complainants, and William Chiles, Hezekiah Boone, &c., defendants.—In chancery:

[*Deposition of Isaiah Boone.*]

The deposition of Isaiah Boone, taken at his house in Woodford county, on the 12th day of December, 1823, by answer to the following interrogatories, to be read as evidence in the above suit, viz.

1st. Did you or not give Chiles full information that the condition in the contract, between your father and Thomas Boone, had never been complied with by your father? And did you or not, on the part of your father, in contracting with Chiles, act entirely without authority from Thomas Boone?

Ans. At the time the contract was made between my father and Chiles, I informed, on the part of, in the presence of my father, that if Thomas Boone had not received payment for the land, in the State of Pennsylvania, out of the estate of George Boone, deceased, that my father, (that is) Hezekiah Boone, was to pay for the land in horses; and I informed Chiles that my father never did pay Thomas Boone any horses; and if Thomas Boone did not receive payment in Pennsylvania, that he did not receive any thing from my father; and that Thomas Boone did not, so far as I knew, apply to my father for payment. In answer to the second part of the question, the deponent states that, in October, 1817, when the contract was made between my father and Chiles, the defendant, he had no authority from Thomas Boone, except that he and George Boone referred to the bonds of South, and the contract between my father and Thomas Boone.

Ques. 2d. Do you or not know that your father wrote himself, or procured you, or some other person, to write to Thos. Boone, informing him that the contract was at an end, and that he must attend to the business himself, and not to blame your father if the land should be lost; or have you heard your father say that such a letter was written to Thomas Boone?

Ans. I recollect distinctly that, in 1809 or '10, my father had a conversation, in my presence, with Mr. John Sellers, with whom my father consulted on the subject, and who is since dead. They determined it was best that my father should write, or send a letter, to Thos. Boone, on the subject. I further state that I have a letter now before me (marked B;) and that the direction of the letter is, to the best of my belief, in the hand-writing of my father, with which I am well acquainted. I have also examined the contents, and believe the hand-writing to be that of Mr. John Sellers, as the writing resembles his very much; and I know that Mr. Sellers was in the habits of intimacy with my

father. I have also heard my father say that he had written to Thomas Boone.

Ques. 3d. At what time did you and your father move to the State of Kentucky?

Ans. I do not recollect exactly, but think it was about 17 or 18 years since.

4th. At what time, if ever, did you or your father give directions to said Chiles to bring suit for said land?

Ans. When the contract was entered into by them, and when they entered into that contract, the sum of $3,000 was particularly specified for the purpose of preventing Chiles from selling or compromising the claim for less, so that my father might be able to get a sum sufficient to pay Thomas Boone for the land, as he was doubtful whether said Thomas had received any thing in Pennsylvania, and because my father wished the land sold or compromised for enough to pay Tho. Boone.

5th. Had your father any written authority from Thomas Boone to make a contract with Wm. Chiles relative to said land? or, by what authority did he act?

Ans. He (my father) had no authority to make such a contract, except the contract between him and Thomas Boone. And further saith not.

ISAIAH BOONE. [L. S.]

State of Kentucky, Woodford county, sct.

The foregoing deposition of Isaiah Boone was this day regularly taken, signed, and solemnly sworn to before us, two of the justices of the peace in and for the county aforesaid, we having proceeded to take the same by virtue of a dedimus to us directed, which is herewith enclosed. Given under our hands and seals, this 12th day of December, 1823.

T. W. SELLERS. [L. S.]
S. WHITTINGTON. [L. S.]

We do certify, that Boone Ingles has paid us the amount of our fees, and also, paid the attendance fees to the two witnesses.

Justices' fees,	$1 each,	$ 2 00
Witnesses' do	50 cts. do	1 00
		$3 00

T. W. SELLERS, J. P.
S. WHITTINGTON, J. P.

[*Deposition of William Cunningham.*]

The deposition of William Cunningham taken at his own house, in Woodford county, on the 12th day of December, 1823, by answers to the following interrogatories by the complainants, to be read as evidence in the foregoing suit:

Question 1st. Are you or not the son-in-law of Hezekiah Boone? Ans. Yes; I married his daughter.

2d. How long have you lived in Kentucky? Ans. I came here in the year 1804, and have lived in this county ever since.

3d. Do you or not live near Hezekiah Boone, and how long have you lived near him? Ans. Yes; I lived near him ever

since he came to the State, and he came here in the year 1805, I believe, or in 1806.

4th. Do you or not know that, and have you or not heard Hezekiah Boone say he never had complied with a conditional contract, made between him and myself, (Thomas Boone) relative to a tract of land on Stoner's fork of Licking, patented in the name of William Hoy, and that he never paid me (Thomas Boone) any thing towards that contract? Ans. I have frequently conversed with Mr. H. Boone on the subject, and I have always heard him say, and have at all times understood from him, that he never paid any thing to Thomas Boone on that contract, (with the conditions of which I was well acquainted) without it was that Thomas Boone might have received something in the State of Pennsylvania. And I've heard him say that he had an account for something like £150 against Thomas Boone; but I know that he never paid Thomas Boone any thing in this country on that contract. The £150 was originally due from the estate of George Boone, deceased.

5th. Did you or not, in the year 1809 or 1810, at the request of Hezekiah Boone, write a letter for him, directed to me, (Thomas Boone) relative to said land? Ans. No; I never wrote such a letter, that I remember. The deponent answers that he knows, and can say nothing, in response to the 6th, 7th, and 8th interrogatories.

Question 9th. Examine the letter marked "B," and state whether it is not the letter referred to, which you wrote for Hezekiah Boone? Ans. I have examined the direction on the letter now before me, and think the direction on the back of it resembles the hand-writing of H. Boone, but I cannot say positively that he wrote it, as I before stated. I did not write it myself; and further saith not.

WM. CUNNINGHAM. [L. S.]

State of Kentucky, Woodford county, sct.

The foregoing deposition of William Cunningham was, by virtue of and under the authority in us vested, by a dedimus to us directed, from the clerk's office of the federal court, for the Kentucky district, this day taken, signed and sworn to before us, two of the justices of the peace, in and for the county aforesaid. Given under our hands and seals this 12th day of December, 1823.

T. W. SELLERS, *J. P.* [L. S.]
S. WHITTINGTON, *J. P.* [L. S.]

[*Interrogatories put to Samuel South by complainants.*]

Said complainant propounds the following interrogatories to Samuel South, to wit: Were you, or not, present when Benjamin South delivered to William Chiles a certain bond given by Reuben Searcy to William Hoy, bearing date 24th of September, 1781? State all that transpired at the time, and all you know relative to said bond, and its validity, and Chiles' obtaining it.

THO. TRIPLETT, p. q.

A copy teste: JOHN H. HANNA, C. C. C. K. D.

[*Deposition of Samuel South.*]

The case of Thomas Boone's heirs against William Chiles, &c. in the circuit court of the United States, Kentucky district: I, Henry Wingate, a justice of the peace for Franklin county, and commonwealth of Kentucky, agreeable to commission to me directed, I caused Samuel South to come before me to depose, and to him propound the interrogatories hereunto annexed in said case above, who answered as followeth:

Samuel South, of lawful age, and duly sworn, deposeth and saith, that some time in the winter of 1817, '18, Benjamin South, in the presence of this deponent, delivered up to William Chiles, under the instruction of William T. Barry, esq., a certain bond given by Reuben Searcy to Wm. Hoy, bearing date 24th September, 1781, conditioned to convey a tract of land containing seven hundred acres, part of said Searcy's settlement and preemption, and marked A; that the said Chiles did, at the same time, deliver to the said Benjamin South, a certain other bond or bonds given by John South, in his life time, to one Smeltser and others; also, one given by the said South to George Boone. The said last mentioned bond was given by the said John South, as executor of William Hoy's estate, and which had been given to the said Boone for his interest in the bond before mentioned, marked A, as appears from the assignment erased on said bond, bearing date 6th August, 1792; the erasure took place at the time the said bond was delivered up to said Chiles, and before he got possession thereof. The said deponent saith, that the said bond given up by the said Chiles to Benjamin South, may be among the papers of said Benjamin, who is now deceased, in the possession of the deponent, but that this deponent cannot at this time lay his hands upon them. This deponent further saith, that the above transaction took place in consequence of the said Chiles producing a power of attorney from George Boone to said Chiles, authorizing him to transact the business in the exchange of the above bonds, and it was done with an assurance that the said Boone, Smeltser, and others, were not to have any lien upon the estate of the said John South, deceased, or any other person in any manner or shape whatsoever, and that the parties were to be placed in the same situation as if the assignment of the bond by Boone to John South had never taken place; and further saith not.

Signed, SAMUEL SOUTH.

Franklin county, sct.

The foregoing deposition of Samuel South, in answer to the annexed interrogatories, was this day taken, subscribed, and sworn to before me, a justice of the peace in and for said county, for the purposes therein mentioned. Given under my hand this 4th day of February, 1828.

H. WINGATE, *J. P.*

[*Deposition of Jos. Steele.*]

The deposition of Joseph Steele, taken by us, John P. Gaines and Cornelius Hughes, two justices of the peace for the county of Boone, and State of Kentucky, pursuant to the dedimus to us directed, from the United States' court for the Kentucky district,

to be read as evidence in a suit now depending in said court, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants. The witness being first duly sworn, deposeth and saith—

1st interrogatory. Are you not the son-in-law of George Boone, and his successor? and are you not well acquainted wit the bond executed by Reuben Searcy to William Hoy, and by him assigned to George Boone? if so, state all you know on the subject of said bond; its genuineness; and, also, as to the transfer, and what you understood from William Hoy, and all he said on the subject.

Answer. I am the son-in-law of George Boone. I have once seen the bond executed by Reuben Searcy to William Hoy, and by him assigned to George Boone, and George Boone assigned it to Thomas Boone, I think in 1785, for seven hundred acres of land, part of R. Searcy's settlement and pre-emption on Stoner's fork, of Licking river. The bond alluded to I always understood from George Boone was genuine, and was assigned by William Hoy to George Boone, I think some time in 1782, 3, or 4; I never saw William Hoy; he was dead before I heard any thing of this bond.

2d interrogatory. Also state if you are acquainted with an article of agreement entered into between Thomas and Hezekiah Boone relative to said land; state all you know on that subject; and also all you know relative to a fraud practised by John South on George Boone when he procured said Searcy's bond from him?

Answer. I seen Hezekiah Boone at his house in Woodford county, I think in the year 1809, at which time he showed me the article of agreement alluded to between him and Thomas Boone, of Pennsylvania, dated November 30, 1802, for the land alluded to, at which time the said Hezekiah solicited me to undertake and bring suit for said claim of land for him, for which he said he would give me one half the land if I succeeded, as he was too old, poor, and inexperienced in business to attend to business of such magnitude. He informed me that Thomas Boone was to get his and his brother Josiah's interest in the estate of their father George Boone, deceased, of Pennsylvania, in part or in full for said 700 acres of land; and I think said Hezekiah then informed me that Thomas Boone was executor or administrator of his father George Boone, deceased, and that when the land of deceased was cashed, that the said Thomas was to have the proceeds in payment; said Hezekiah asked my opinion of the probability of success in case suit brought. I informed him from information received of George Boone and others, that I had no doubt but that the whole or nearly all of the land could be recovered, it being the best claim upon the ground, except a small interference of Isaac Ruddell's claim, and that there was enough of surplus in the settlement and pre-emption claim to balance, or more than balance, what might probably be taken by Riddle's claim; George Boone informed me that in the year 1791 and 2, that John South had frequent conservations with him relative to said 700 acres of land, and informed him, the said George, that the said land would be lost by superior claims, and I think named Isaac Riddle's

claim as one that might take it, and solicited said George Boone frequently, as agent for Thomas Boone, to give up the original bond given by R. Searcy to William Hoy for the aforesaid land to him, the said John South, who was executor of William Hoy, deceased, and that he would give him his obligation to cause to be conveyed to the said Thomas Boon the 700 acres of land aforesaid, if it could be held by William Hoy's heirs when they became of age, if he would give up the bond aforesaid; and upon the faith of said assurance, South being then considered wealthy, and a man of honor, said Boon was induced to give up the said bond. On the 6th day of August, 1792, said John South executed his bond as executor of Wm. Hoy, deceased, to George Boon, attorney in fact for Thomas Boon, for the aforesaid 700 acres of land, if recovered, and if the land should not be recovered, the said Boon was, by the obligation aforesaid, to have 700 acres of first rate land, his choice of all the lands of William Hoy, deceased, on the waters of Licking river. The said George Boon further informed me, that in some short time after he gave up the bond aforesaid, that he discovered that said South had practised a fraud upon him, for that he (South) had, on the 27th day of December, 1791, executed his bond with Walter Carr and John Glover, as securities to a certain Peter Smeltzer, of Bourbon county, for 400 acres of the aforesaid 700 acres of land. He also informed me that said Smeltzer was notified that the said land was owned by Thomas Boone, of Pennsylvania, which information said Smeltzer received previous to his purchase, and that said South sold 200 acres of the aforesaid land to a certain George Pope in 1794. Said Boon further informed me, as he was informed and believed, said South had sold Smeltzer the land alluded to, to procure money for the purpose of speculation. He also informed me, that he had no intimation of any sale being made or contemplated by the said South, (he being one of the legatees as well as executor of said Hoy,) until after he had delivered the bond aforesaid.

3d. Interrogatory. Also state all you know ekiah } Torn
Boons paying any thing on the condiai } off.
All you know relative to said contract and transactions, and all you know relative to Geo. Boon's agency for Thomas Boon relative to his land in Kentucky, and state all George Boon ever said to you on the subject.

Ans. I have no knowledge of any payments being made by Hezekiah Boone on the contract. I have stated substantially, in answer to the second interrogatory, what I know relative to said contract. George Boone informed me that he had received a power of attorney from Thomas Boone, under which he demanded a conveyance from said William Hoy, of the aforesaid seven hundred acres of land. Hoy evaded it at that time, and shortly after died. The said power of attorney was made the first day of October, 1787, in Berks county, Pennsylvania; said Boone informed me he did not receive it for some time after it was made; and further this deponent saith not.

JOSEPH STEELE.

The foregoing depositions was taken, signed, and sworn to by

Joseph Steele, at his house, in the county of Boone, on the 15th day of April, 1828, before the undersigned justices of the peace, for the county aforesaid.

JOHN P. GAINES, J. P. B. C.
CORNELIUS HUGHES, J. P. B. C.

The within deposition of Joseph Steele, is excepted to by defendant's counsel, because not taken and certified agreeable to law, and taken without notice.

2d. Because it consists of hearsay answers and leading interrogatories.

3d. Because it purports to prove the contents of a lost bond, and the assignments thereon, without proving the execution of the bond, and its assignments; and, when, by complainant's own showing, there is a copy of said bond and assignments in existence, which would be better evidence than proof of their contents.

BARRY & BLEDSOE, *for Defendants.*

[*Depo. Wm. Cunningham.*]

State of Indiana. Orange county, ss.

The deposition of William Cunningham, taken this 12th day of April, 1832, at the house of said Cunningham, in the county and State aforesaid, before us, Wm. Case and E. Riley, two of the acting justices of the peace, in and for the county and State aforesaid, to be read as evidence in a suit now pending in the 7th circuit of the United States, in and for the Kentucky district, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants, in chancery; and the said William Cunningham, being of lawful age and sound memory, and having been by us duly sworn, deposeth and saith:

Quest. 1st, by defendant. State whether you were, or not, present when a contract, between Thomas Boone, dated 30th November, 1802, and attested by Mordecai Lincoln and Thomas Lincoln, for the sale of seven hundred acres of land, was executed. Ans. Yes, I was.

Quest. 2d. If you were present, state all you know touching and relative to the same? Ans. It was understood, that Thomas Boon was to settle all the business of the estate of George Boone, and all the vouchers of the estate were given up to him. And when completed was to account to Hezekiah Boone for his interest, and then strike a balance; and if the interest was equal to the seven hundred pounds, to be in full discharge of the land; and if more or less, the balance to be accounted for by either, as it was supposed the estate would be sufficient.

Question 3d. by same. State whether the annexed copy, certified by John H. Hanna, is not, to the best of your belief, a true and correct copy of said contract. Ans. Yes, I believe it to be a true copy.

Quest. 4th. State whether you have, or not, examined the original, formerly on file in the Bourbon circuit court, and whether the same is not genuine. Ans. I have seen the original bond, and believe it to be genuine.

Quest. 5th. State whether you did not formerly give your deposition respecting the due execution of said contract, and the cir-

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cumstances connected therewith, in a suit depending in the Bourbon circuit court, respecting the same land, between Thomas Boone, William Chiles, and others; and whether the statements contained in your said deposition are not true. Ans. I did, and the statements therein contained are true.

Question 6th. State whether Mordecai Lincoln and Thomas Lincoln, the subscribing witnesses to said bond are, or are not, if living, residents of the State of Pennsylvania?

Answer. I have understood they were dead, but if they are living, I expect they live in Pennsylvania.

Question 7th. When said contract was executed, was it, or not, there and then stipulated, that Thomas Boone was to settle up all the Pennsylvania business, relative to the estate of the father of said Hezekiah?

Answer. It was, and to account for and settle the interest of Hezekiah Boon, as stated by me above.

Question 8th. Did, or not, Hezekiah Boon delivered up to Thomas Boon, bonds held upon William Boon, the father of Thomas, for lands sold to said William, by Hezekiah?

Answer. He did, as I understood, and I further understood that they were to be accounted for upon settlement, at the end of four years.

Question 9th. Have you, or not, been intimate with Hezekiah Boone and his affairs ever since the date of said contract; and if so, state whether you have not always understood that Thomas Boone never did account to him for the Pennsylvania estate?

Answer. I have been intimate with him since that time, and I always understood that he never did account to him for said estate, or any part of it.

Question 10th. State any thing further that you may know relative to said contract.

Answer. At the time of the making of the contract it was understood and agreed upon, that the whole of the Pennsylvania business could be closed up in four years, and at the end of that time, Thomas Boone was to come to the residence of Hezekiah Boone, in the State of Tennessee, and settle up all the business; and if the Pennsylvania estate was not sufficient to discharge the whole seven hundred pounds, that Hezekiah was to pay the balance in horses, and if the estate was more than sufficient, that Thomas was to pay to Hezekiah whatever the balance might be; and I understood also, that there was in the hands of William Boone, (in his life time) a sum of money, perhaps twenty-five pounds, due to Hezekiah from the estate of his brother, Jeremiah Boon, deceased, which Thomas Boone was also to settle and account for upon the settlement to be made at the end of the four years; and I understood also, that Thomas Boone's father (William Boone,) was indebted on his own account to Hezekiah Boon, and that was also to be accounted for as above stated, but Thomas Boon never did call upon, nor make any such settlement with Hezekiah Boone; and further, this deponent saith not.

WM. CUNNINGHAM.

Sworn and subscribed to before us, this 12th day of April, 1832.

WILLIAM CASE, J. P.
E. RILEY, J. P. O. C.

State of Indiana, Orange, sct.

We do hereby certify, that the foregoing deposition of William Cunningham, was taken before us, William Case and E. Riley, two of the acting justices of the peace, in and for the county of Orange, and State of Indiana, to be read as evidence in a matter of controversy now pending in the 7th circuit court of the United States, in and for the Kentucky district, wherein Thomas Boon's heirs are complainants, and William Chiles and others are defendants, in chancery, taken at the house of William Cunningham, in the county and State aforesaid, on the 12th day of April, 1832, between the hours of ten and four o'clock of said day. Given under our hands and seals, this day and date above,

WM. CASE, J. P. [L. S.]
WM. RILEY, J. P. O. C. [SEAL.]

The complainants will object to the reading of the within deposition, because the matter of it and the interrogatories are incompetent and irregular.

CRITTENDEN, &c.

The tenants in possession of the land comprising all the defendants, except Chiles, make the same exceptions.

DEPEW,
for tenants in possession.

[*Deposition of Henry David.*]

The deposition of Henry David, of lawful age, taken at the tavern of Henry Timberlake, in the town of Paris, to be read as evidence in a suit in chancery now depending in the federal court, held at Frankfort, for the district of Kentucky, wherein the heirs of Thomas Boone are complainants, and John Evault and others are defendants. This deponent being first duly sworn, deposeth and saith, that he, this deponent has lived in this county for thirty two-years; that when he first came to the country, James Thomas lived on the farm, which he, the said James Thomas, afterwards sold to John Evault; that Thomas had a field, when he, this deponent, first came to the country, within the lines of Hoy's claim; that Thomas and Evault, since him, have used it ever since; he further saith, that had a still house on said disputed land; and he further saith, that John Evault settled another little place, by Scipio, a free man of color.

Question. By Boon Ingles. How long has the field now in the occupancy of John Evault, within Hoy's claim, been cleared and fenced, and how much of said field lies within Hoy's claim?

Answer. A part has been cleared upwards of thirty-one or two years, within Hoy's claim, and then fenced, but how much of said field lies within Hoy's claim he does not know.

Question. By the same. How did Evault come into the possession of the interference?

Answer. By purchase of Thomas.

By same. Whether the refusal of Evault refusing to pay Thomas for the land, within the interference, was not upon the account of superior or *tant*amount, out standing claim held adversely?

Answer. I understood it was.

Question. By same. How long has it been since Joseph Cummins fenced a woods pasture within the interference?

Answer. I think five or six years.

Question. By same. Do you, or not, know that there was a contract or agreement, or an arrangement between William Chiles, who recovered the land in the interference in an action of ejectment, to hold said land under Hoy until the suit was ended?

Answer. I know nothing of it.

Question. By same. State, if you know, how James Trabue become entitled to the land within the interference, and state all you know about it?

Answer. I heard Evault say, that he had sold said land to Trabue, and Trabue say that he had bought *him* out. All I know about it, and nothing more than what I have stated.

HENRY DAVID.

Bourbon county, sct.

The foregoing deposition of Henry David, was taken, subscribed and sworn to, before me, a justice of the peace for said county, at the tavern of Henry Timberlake, in the town of Paris, on the 13th day of November, 1828. Given under my hand accordingly.

HENRY TIMBERLAKE.

[*Deposition of John Hinkson.*]

The deposition of John Hinkson, of lawful age, taken at the law office of John G. Martin, in the town of Paris, agreeable to notice on the 12th day of November, 1828, to be read as evidence in a suit in chancery, now depending in the federal court, for the district of Kentucky, wherein the heirs of Thomas Boone, deceased, are complainants, and John Evault and others, are defendants, this deponent being of lawful age, and first duly sworn, deposeth and saith, that he has lived in Kentucky nearly from its first settlements; that James Thomas settled on the farm which he afterwards sold to John Evault, in early times, and that his father, James Thomas, senr., settled on land adjoining, about the same time; that as well as he now recollects, it has been upwards of thirty-six years since James Thomas settled the land sold to Evault, as above; that Thomas always claimed and held the land as his own, and that Evault, since his purchase, has always claimed it as his own: there was a still house belonging to Thomas, that stood, as I always understood, upon the forty acres now in contest; but of my own knowledge, I do not know whether it stood on that land or not. He states that John Evault settled a man of color, named Scipio, upon said small slip of land, I think, three years ago, and said negro tended corn there once or twice before he moved away; that Thomas extended his fields eastwardly, towards Nicholas Smith's; he always understood that Hoy's line ran through one of Thomas's fields, next to said Smith's, and that said field, or a part thereof, was cleared upwards of thirty years ago. He states that there was a still house on the land, in contest, upwards of thirty years ago, of which he feels satisfied, having refreshed his memory on the subject. He states, that Evault has always been in the uninterrupted possession of that

field, since he bought it. Evault said, that he was dissatisfied that Cummins should fence up a part of the land, and said he would take the rails away, and did do it. Said Evault has taken off a great deal of wood from the land. He always understood, that Thomas Thomas died before his father, without children; and further saith not.

JOHN HINKSON.

The foregoing deposition of John Hinkson was this day taken, subscribed, and sworn to, in my presence, a justice of the peace for Bourbon county, this 15th day of November, 1828.

TANDY ALLEN.

[*Deposition of Jonathan Jones.*]

The deposition of Jonathan Jones, before me, Calvin Blythe, the undersigned, president judge of the court of common pleas for the county of Schuylkill, and State of Pennsylvania, duly commissioned, sworn, and acting as such, taken on this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and thirty-three, in the county of Schuylkill, and State aforesaid, to be read as evidence in a certain suit depending in the seventh circuit court of the United States of America, in and for the Kentucky district, holden at Frankfort, in the State of Kentucky, wherein the heirs of Thomas Boone are complainants, and William Chiles and others are defendants:

The said deponent, being first duly sworn, and cautioned to depose the whole truth, doth depose and say, that he resides in said county of Schuylkill, and more than one hundred miles from Frankfort aforesaid: furthermore, he saith, that he was well acquainted with Thomas Boone, of the county of Berks, and State of Pennsylvania, in his life time; and at his death, he left the following named children, to wit, Sarah Boone, Lincoln Boone, Jeremiah Boone, Richard Boone, Rebecca Boone, Daniel Boone, Mary Ann Boone, William Boone, and Thomas Boone.

JONATHAN JONES.

Sworn and subscribed before me on the day and at the place above written.

CALVIN BLYTHE.

State of Pennsylvania, Schuylkill county, ss.

I, Calvin Blythe, president judge of the court of common pleas for the county of Schuylkill, in the State of Pennsylvania, duly commissioned, sworn, and acting as such, do certify, that, at the request of the complainants in said suit, I caused the deponent in the foregoing deposition to come before me at the time and place stated in the caption, because the said witness resides more than one hundred miles from Frankfort, Kentucky, the place of holding said court of the United States; that I did not cause any notification to be given to the adverse party of the time and place, so as to be present at the taking the same, because the said adverse party did not reside within one hundred miles of the place of taking the same, and had no agent or attorney, known, within that distance of the said place of caption. The said witness was by me carefully examined, cautioned, and sworn, then and there, to testify the whole truth: the said deposition was wholly reduced

to writing by me in presence of said witness, then and there, and subscribed by him in my presence: that I am not of counsel or attorney for either of the parties, or interested in the event of the cause. All of which I do certify to said court, and the cause and manner wherefore the said deposition was taken.

CALVIN BLYTHE. [SEAL.]

State of Missouri, county of Boone, ss.

Agreeable to a dedimus to us directed from the seventh circuit court of the United States in and for the Kentucky district, wherein Thomas Boone's heirs are plaintiffs, and William Chiles and others are defendants, we, Tyre Harris and William Lents, two justices of the peace within and for the county aforesaid, met at the house of William Boone, in the county aforesaid, on Tuesday, the seventh day of July, eighteen hundred and twenty-nine, and then and there proceeded to take the deposition of said William Boone, to be read in evidence in said court, between said plaintiffs and said defendants, on the part of said plaintiffs:

[*Deposition of William Boone.*]

William Boone, of Boone county, and State aforesaid, being duly sworn according to law, deposed and said:

Question 1st, by plaintiff. Are you or not the son of George Boone, deceased?

Answer. Yes.

Question 2d, by do. Do you know of a bond, executed by Reuben Searcy to William Hoy, assigned by him to George Boone, and by him to Thomas Boone? if so, state whether you consider its assignment genuine. It was a bond for seven hundred acres of a tract of fourteen hundred acres, patented in the name of William Hoy, assignee of Reuben Searcy.

Answer. There was a bond, executed by Reuben Searcy to William Hoy, and from Hoy to George Boone, for seven hundred acres of land, and assigned by George Boone to Thomas Boone, of Pennsylvania; which assignments, as far as I know, were genuine.

Question 3d. State whether John South, by false and fraudulent representations, did or not obtain the possession of said bond from your father, George Boone; and state whether South, at the same time. did or not give to your father his own bond for a like number of acres, elsewhere, of the same quality.

Answer. South did affirm to my father, that the seven hundred acres of land assigned by Hoy to him would be lost by a better claim, and if George Boone would give up the original bond to him, administrator of Hoy's estate, that he would execute his bond to said Boone for seven hundred acres of equal quality, which Boone agreed to take, provided the seven hundred acres, called for by the original bond, should be lost; and the understanding was between them, that if the land should not be lost in law, then he was to convey the seven hundred called for in the original bond.

Question 4. State when South got possession of said bond, and whether he had not, about two years prior to that time, sold the same seven hundred acres to Smeltzer and others.

Answer. I dont recollect the date, but I think it must be upwards of thirty-five years ago that he got possession of the original bond, and that he had sold the land previous to his coming to my father, George Boone, and telling him it would be lost, but how long before I dont recollect.

Question 5. State whether Thomas Boone, at any time after South got possession of said bond, had access to it; and state the reasons of Thomas Boone's long delay in effecting his right to said land, and whether the delay was or not mainly owing to the bond's being in South's possession, and to Thomas Boone's being a resident of Pennsylvania; and state, when South got possession of said bond, he did not tell your father the land was lost by a better claim.

Answer. I think not; and the reason of Thomas Boone's long delay in effecting his right, was owing to his living at such a distance, and expecting that George Boone would attend to his business, being empowered so to do; and another reason might be, that he suspected, from the conditional contract, that Hezekiah Boone might have gotten the papers, and obtained the title. As to any delay on account of the bond's being in South's possession, I know nothing about it; but when South got possession of the original bond, he did tell George Boone, that the seven hundred acres of land would be lost by a better claim.

Question 6th. Were you acquainted with William Hoy and Reuben Searcy? and did you or not understand from them, the bond and its assignments were good for seven hundred acres of land, lying on Stoner's fork of Licking?

Answer. I was acquainted with both men, but never heard either of them say any thing about the bond or assignments being good, but know that Hoy assigned said bond to George Boone for a valuable consideration.

Question 7. Were you acquainted with the conditional contract, for the same land, between Hezekiah Boone and Thomas Boone? if so, state whether Hezekiah Boone did or not admit that the contract, on his part, had not been complied with, and that he considered the contract was no longer binding on Thomas Boone; state all you know on that subject.

Answer. I was only acquainted with the conditional contract, from a letter written from Thomas Boone to George Boone, and from often hearing Hezekiah Boone speaking of the contract between him and Thomas Boone for the aforesaid land; and I think I heard him, Hezekiah Boone, say the contract was not complied with on his part.

Question 8th. State whether you know any thing of William Chiles having got possession of South's bond aforesaid from your father; if so, state all you know about it, and the manner in which the papers were cancelled and given up; state whether Hezekiah Boone set up any claim whatever to the land under the said conditional contract with Thomas Boone.

Answer. As for Chiles having got possession of South's bond from my father, I know not in what way or when, having long since left the State of Kentucky and moved to Missouri, and as to Hezekiah Boone's setting up any claim to the land under the conditional contract with Thomas Boone, at this time I know not,

but know he once set up a claim, but has since admitted that his contract was not complied with. And further this deponent saith not.

WM. BOON.

State of Missouri, county of Boone, ss.

Sworn to and subscribed before us, Tyré Harris and William Lients, two justices of the peace, within and for the county aforesaid, this 7th day of July, in the year of our Lord eighteen hundred and twenty-nine.

TYRE HARRIS, and
WM. LEINTS,
Justice of the peace.

N. B. Interlined by order of deponent in 2d line of the answer to the 4th question, with the word five.

State of Missouri, county of Boone, sct.

I, Warren Woodson, clerk of the county court, within and for the county and State aforesaid, do hereby certify, that Tyre Harris and William Lients, esquires, whose signatures are affixed to the above certificate, now are, and were at the time of their making and signing the same, acting justices of the peace, within and for said county of Boone, duly commissioned and qualified according to law, and that to all their official acts as such, full faith and credit are due, and should be had and given.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said county court, at office, this 8th day of July, in the year of our Lord one thousand eight hundred and twenty-nine.

[L. S.]

WARREN WOODSON, Clk. B. C. C.

State of Missouri, county of Boone, sct.

I, James McClelland, presiding judge of the county court of Boone, within and for the county of Boone aforesaid, do hereby certify, that Warren Woodson, whose name is subscribed to the above certificate, now is, and was at the time of the making and signing the same, the acting clerk of the county court for the aforesaid county of Boone, duly commissioned and qualified; and that his said attestation is in due form of law.

Given under my hand and seal this 10th day of July, A. D. 1829.

JAMES McCLELLAND. [SEAL.]

[*Interrogatories put to Ravenscraft and others by defendants.*]

The depositions of Thomas Ravenscraft, Humphrey Lyon, Abraham Kellar, James Arnold, Thomas Amory, James Clarke, Isham Talbot, Benjamin Mills, John G. Martin, and others, by answers to the following interrogatories by the defendants:

Question 1st. Do you or not, know any thing of a bond, said to be executed by Reuben Searcy to William Hoy, for seven hundred acres of land upon the waters of Stoner fork of Licking, situated now county of Bourbon, being a part of a settlement pre-emption entered and surveyed in the name of said Searcy, and patented in the name of William Hoy? If you know any thing of said bond, please to state all you know about it

Question 2d. State if you know whether said bond was not assigned to John South; and whether said South had not the possession of said bond for a long time before his death; and how, after his death, did the bond get out of the possession of his heirs. State, also, any other substantive fact that you may know concerning said bond.

Question 3d. State whether you know any thing of two bonds, executed by John South in his lifetime, for part of said land: one made and executed John South, Math. Carr, and John Glover, bearing date the 3d day of December, 1791; the other executed by John South to Pope, who assigned it to Swope, who assigned it to Nicholas Smith. If you have any knowledge of said bonds, or the assignment, please to state all you know about them.

Question 4th. Do you, or do you not know, that John South had sold the above mentioned land to Peter Smeltser and Nicholas Smith, long before the 3d day of December, 1791, but upon the last mentioned day the contract was renewed and re-executed by the parties. State if you know any thing of the first contract, which was then renewed and re-executed? Whatever substantive knowledge you have touching the above interrogatory, state it fully.

Question 5th. Do you or not know by whom said land was settled and improved, and under whom improved, when improved, and by whom the possession has been held ever since? Please to state all you know about it.

Question 6th. Are you, or not, acquainted with Thomas Boone? If so, please to state whether he ever was in Kentucky; and if he was, when was it, and where did you see him; and whether the said Thomas Boone has or has not been in Kentucky frequently. State all you know.

Question 7th. How far is Paris in Bourbon county, Kentucky, from the aforesaid land; and is Paris not situated upon the main limestone road, a county town, and a place of considerable business and information? Please state all you know.

Question 8th. What is the value of the lasting and valuable improvements made upon the land now held by George W. Baylor, and Nicholas and Jacob Smith? If you know, please state.

Question 9th. Are you acquainted with a certain Boon Ingles? is so, please to state where he resides.

Question 10th. Do you or not know any thing of Boone Ingles having any claim to any part of the above mentioned land? and if so, how much, and by what means he obtained; and whether or not he did or not *ridge* from Paris, Kentucky, to Pennsylvania, make an investigating or speculating contract with said Boone, to prosecute this suit at his, the said Boone Ingles, own proper costs and charges, freeing the said Thomas Boon from all costs whatever? State all you know about it.

Question 11th. Are you *are* acquainted with John Smeltzer, and Anna Maria Smeltzer? If so, state whether they are or are not the children of Peter Smeltzer, deceased, and recognised by him as such in his will. State all you know.

A copy. Att: JOHN H. HANNA, C. C. C. K. D.

The deposition of George A. Smith, taken in the county of Bourbon, and State of Kentucky, in answer to sundry interrogatives, filed in the circuit court of the United States, for the seventh circuit and district of Kentucky, to be read as evidence in a suit in chancery, now depending in said court, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants. This deponent being of lawful age, and first duly sworn, deposeth and saith:

In answer to the first, second, third, and fourth, I know nothing about them. In answer to the fifth: I know that Peter Smeltzer and Nicholas Smith, Jacob Smelser, and George W. Baylor, have occupied the land to this time, and ever since I knew the place.

Answer to the 6th: I know nothing.

Answer to the 7th: I suppose Paris to be five miles; a place of business, and a country town, and situated on the old limestone road.

Answer the 8th interrog: I acted upon oath as one of the commissioners to value said improvements, that I value Nicholas Smith $3,129. I also valued Jacob Smith $908 00. I also valued George W. Baylor's improvements $1,617 26. I believe the improvements to be worth the money at that time. George W. Baylor since that time has further made improvements in addition to his former improvements, useful, and lasting, and valuable.

Answer to the 9th. I know Boon Ingles, he lives in Paris, he is a hatter by occupation.

Answer to the 10th. I understood from Boon Ingles, that he was to have a certain part of the land if it was gained.

Answer to the 11th interrog. From reputation I believe them to be Peter Smeltzer's children. And further this deponent saith not.

GEORGE A. SMITH.

[*Deposition of John Edwards.*]

Also, the deposition of John Edwards, taken at the same time, and at the same place, and for the same purpose, this deponent being of lawful age and first duly sworn, deposeth and says, as to several interrogatories propounded to him herein, he has no particular knowledge of any of them except the 8th and 9th. That in answer to the 8th interrogatory, I acted as one of the commissioners to value said improvements, that I value Nicholas Smith's $3,129. I also valued Jacob Smith's $908. I also valued George W. Baylor's at $1,617 26. I believe the improvements to be worth that money at that time. As to the 9th interrogatory—I am acquainted with Boone Ingles, he lives in Paris, Kentucky, he is a hatter by occupation; and further this deponent saith not.

JOHN EDWARDS.

[*Deposition of James Robinson.*]

The deposition of James Robinson, taken at the same time and place, and for the same purpose, being of lawful age, and first duly sworn deposeth and saith, as to the first interrogatory, was called on by William Chiles (as a justice of the peace) to take the

deposition of Barbara Smeltzer, widow of Peter Smeltzer, deceased, in the case of Chiles against Hoy's heirs; in course of *taken* the deposition she had an allusion to a bond given by Reuben Searcy to William Hoy, and said deponent named the amount of land contained in the bond, and the date thereof, that it surprised Chiles in such a manner, that he turned round to this deponent, and expressed a surprise, that a woman of her age retained such a recollection; observing at the same time she was correct, and said that he had the bond in his pocket, and drew the bond out and shewed it to this deponent, and that the date of the bond exactly corresponded with the said Barbara's statement. As to the second interrogatory, this deponent has no knowledge of, except what is expressed in the first. As to the third interrogatory, this deponent was with John Walton and John Jones, chosen by the heirs of Peter Smeltzer, deceased, agreeable to his will, to make partition of the lands of said decedent, but that he does not recollect particularly from whence they got the metes and bounds of said land, unless it was from a bond given by John South to Peter Smeltzer, deceased, and that he had always understood that Smeltzer purchased said land of John South. As to the fourth, I have no further knowledge than I have already stated, except the general understanding of the neighbors. As to the fifth interrogatory, this deponent came to Kentucky, in June 1789, and knows that Peter Smeltzer had a few acres of land cleared near to where George W. Baylor now lives, and on the same tract; that he cannot state particularly, what time Smeltzer moved his family there, but thinks it some time in the year 1791, or 1792, but will not be positive; that said Smeltser died some few years afterwards, and that said land has continued in possession of Smeltzer's heirs till they sold said land to George W. Baylor, who now is in possession of the same, and that he had a tenant on the land some time before he removed there, but does not recollect who he was. This deponent further states, that James Thomas purchased the land and settled on it, where John Evault now lives, some time, he thinks, in the year 1790, and that John Jones, who was intermarried with a daughter of said Thomas, purchased 50 acres of said tract, and settled there about the same time, where Nicholas Smith now lives, and that Nicholas Smith, senr., now dead, purchased the said fifty acres of Jones in the year, and has continued in the possession of said Smith and his heirs ever since, and that said land that was purchased by Thomas and Jones, was, in early times, called Trabue's land, this deponent knows nothing of the land said Smith purchased of Hoy, but from information. As to the sixth interrogatory, this deponent knows nothing. As to the seventh interrogatory, this deponent thinks, that the town of Paris, in Bourbon county, is about five miles from where Peter Smeltzer lived at his death, and that it is the county town of Bourbon, situate on the main limestone road, and that it is a place of considerable business. As to the eighth interrogatory, this deponent cannot say what the value of the improvements are, but knows they are valuable and durable, that there is a good house, barn and orchard, and other valuable improvements on the lot allotted to John Smeltzer, and the lot allotted to Anna Maria Smeltzer, has also some valuable improvements on it, these two

lots being the same lots divided by the commissioners, and allotted by us to them, containing one hundred and sixty seven acres each, and is the same lots of land now owned and occupied by said Baylor; this deponent further states, that Nicholas Smith has also a good house, barn, orchard, and other valuable improvements, and that Jacob Smith has a good house and valuable improvements; as to their respective values, he is unable to state.

As to the ninth interrogatory, this deponent says, that he is well acquainted with Boone Ingles, that he is a hatter, and resides in the town of Paris. As to the tenth interrogatory, this deponent has no knowledge except from hearsay. As to the eleventh interrogatory, this deponent has some knowledge, that he is acquainted with John Smeltzer, Jacob Smelser and Anna Maria Smeltzer; that they have been the reputed children of Peter Smeltzer, and were recognized by him in his will; and further this deponent saith not.

JAMES ROBINSON.

State of Kentucky, and county of Bourbon, to wit:

I, Hugh Talbot, one of the acting justices of the peace, in and for the county of Bourbon, and State of Kentucky, being by virtue of my commission, one of the judges of the county court, a court of record in and for the county aforesaid, duly commissioned and sworn, and acting as such, do certify, that, in pursuance to a dedimus to me directed, with sundry interrogatories annexed thereto, commanding me to assemble together sundry witnesses therein mentioned, and others, and to cause them to be diligent and circumspectly examined, in answer to certain interrogatories to them by the defendants propounded, to be read as evidence in a certain matter of controversy now depending in the seventh circuit court of the United States, in and for the Kentucky district, wherein Thomas Boone's heirs are complainants, and William Chiles and others are defendants; that I did, on the 27th day of April, 1826, by virtue of my office aforesaid, and in pursuance to the dedimus, and interrogatories to me directed, cause to assemble and collect together, in my presence, in the county and State aforesaid, at the dwelling house of George A. Smith, John Edwards, esq. George A. Smith, and James Robertson, esq., that I did then and there place before said witnesses, in their presence, the dedimus and interrogatories aforesaid; and having first *being* duly sworn, carefully examined and cautioned, each of the aforesaid witnesses, severally and separately, then and there to testify the truth, the whole truth and nothing but the truth, in answer to the several interrogatories to them propounded; that they did each of them write separately their own depositions, and signed their own names thereunto. I further certify, that I am not counsel nor attorney to either of the parties, or interested in the event of the case; all which I do certify to said court, as the cause and manner wherefore said depositions were taken. Given under my hand and seal this 26th day of April, 1826.

HUGH TALBOTT, J. P. B. C. [L. S.]

[*Cross interrogatories put to Benjamin Mills by complainants.*]

The following are cross interrogatories filed by Thomas Boon's heirs against William Chiles, &c.

Circuit court of the United States, for the seventh circuit and district of Kentucky:

These interrogatories are to be answered by Benjamin Mills, and are filed in consequence of interrogatories filed by the defendants in this suit, and are to be answered when said defendants take said Mills' deposition; the cross interrogatories are as follows, to wit:

1st. Were you or not called upon many years ago, by Nicholas Smith, senr. or some of the Smeltzers to bring a suit for them against Thomas Boone, a non resident, to procure for them the legal title from him, to part of a tract of land in Bourbon county, on the waters of Licking, the whole of which tract had been entered in the name of Reuben Searcy, and patented in the name of William Hoy? If so, state the names of the persons who applied, whether you brought a suit for them; if not, state what was the reasons, and the result of your examination, and their title.

2d. Did you, or did not some years since bring an ejectment in the names of William Hoy's heirs against said Smiths and Smeltzers, in the Bourbon circuit court? If so, state who employed you, and whether Thomas Boon was consulted about bringing the suit, or had any notice of it.

3d. Do you or not as counsel, for William Chiles, and by his procurement some years since, bring a suit in the Bourbon circuit court, in the joint names of George Boone, Thomas Boon, and Hezekiah Boon, and said Chiles against William Hoy's heirs for the purpose of procuring for them, or some of them, the legal title to the foregoing land, or some of it? If so, state whether Thomas Boone had any knowledge of the suit, and whether you have any personal knowledge that Thomas Boon gave any consent, that the conveyance should be made to Chiles.

4th. How long since you ceased to be the counsel for William Chiles, in the foregoing suits? State whether, since you ceased to be his counsel, and since the pending of the present suit in the federal court, Chiles has not acknowledged to you, that if it were not for the bonds formerly held by South, and the Smeltzers, upon South, Carr and Glover, he would make defence in this suit, and would at once let a decree go in favour of the complainants. State what Chiles said on that subject.

5th. Were you or not acquainted with, or have you not seen the assignment upon Searcy's bond to South, and do you or not, remember that there was no consideration for said assignment? Have you or not seen the bond given by John South to George Boon at the same time the assignment was made, binding South to convey the same land to Thomas Boon, so soon as South could procure the legal title for the land specified in Searcy's bond. If you have seen the power of attorney from Thomas Boon to George Boone, state whether it authorised the latter to make such assignment to South; state whether William Chiles has not told you since the pendency of this suit, that the complainant should not, if he could help it, have a trial of this suit

for five or six years; also state whether you have not seen the bond above mentioned, held by Searcy and its various assignments; and state whether you do not know of its loss out of Arnold's office, and when; state all your knowledge about the bond, its assignments and loss.

A copy. Attest, JOHN H. HANNA, C. C. C. K. D.

[*Interrogatories to Mills and others, by defendants.*]

The depositions of Thomas Ravenscraft, Humphrey Lyon, Abraham Keller, James Arnold, Thomas Amory, James Clarke, Isham Talbot, Benjamin Mills, John G. Martin, and others; by answers to the following interrogatories, by the defendants:

Question 1. Do you or not know any thing of a bond, said to be executed by Reuben Searcy to Wm. Hoy, for seven hundred acres of land, upon the waters of Stoner's fork of Licking, situated now in the county of Bourbon; being a part of a settlement and preemption, entered and surveyed in the name of said Searcy, and patented in the name of William Hoy. If you know any thing of said bond, please to state all about it.

Question 2. State if you know whether said bond was not assigned to John South, and whether said South had not the possession of said bond for a long time before his death, and how, after his death, did the bond get out of the possession of his heirs; state also, any other substantive fact, that you may know concerning said bond.

Question 3d. State whether you know any thing of two bonds executed by John South, in his life time for the part of said land, one made and executed by John South, Walter Carr and John Glover, bearing date the third day of December, 1791; the other executed by John South to Pope, who assigned to Swope, who assigned it to Nicholas Smith; if you have any knowledge of said bonds or the assignments, please to state all you know about them.

Question 4th. Do you or do you not know that John South, had sold the above mentioned land to Peter Smeltzer, and to Nicholas Smith, before the third day of December, 1791; but upon the last mentioned day, the contract was renewed and re-executed by the parties; state if you know any thing of the first contract, which was thus renewed and re-executed; whatever substantive knowledge you have of touching the above interrogatory, state of it fully.

Question 5th. Do you or not know by whom said land was settled and improved, and under whom improved, when improved, and by whom the possession has been held ever since; please to state all you know about it.

Question 6th. Are you or not acquainted with Thomas Boone? If so, please to state whether he ever was in Kentucky; and if he was, when was it, where did you see him; and whether the said Thomas Boone has or has not been in Kentucky frequently? State all you know.

Question 7th. How far is Paris in Bourbon county, Kentucky, from the aforesaid land, and is Paris or not situated on the main

limestone road, a county town and a place of considerable business and information? Please to state all you know.

Question 8th. What is the value of the lasting and valuable improvements made upon the land now held by George W. Baylor and Nicholas and Jacob Smiths? If you know, please state.

Question 9th. Are you acquainted with a certain Boon Ingles? *is* so, please to state where he resides.

Question 10th. Do you or not know any thing of Boon Ingles having any claim to any part of the above mentioned land? and, if so, how much, and by what means he obtained; and whether or not he did or did not ride from Paris, Kentucky, to Pennsylvania, make an investigating or speculating contract with said Boone to prosecute this suit, at his said Boon Ingles' own proper costs and charges, freeing the said Thomas Boon from any costs whatever; state all you know it.

Quest. 11. Are you acquainted with John Smeltzer, Jacob Smeltzer, and Anna Maria Smeltzer? if so, state whether they are or are not the children of Peter Smeltzer, and recognised by him as such in his will; state all you know.

[*Deposition of Ben. Mills.*]

In obedience to the annexed *dedimus*, to me directed, empowering me to take and examine Benjamin Mills, as a witness, for George W. Baylor and others, defendants in a suit in chancery, in the circuit court of the United States for the Kentucky district depending, I have caused said witness to come before me, at my house, in Paris, on the 7th day of April, 1826; and he, being duly sworn and charged as the law requires, did depose and say, in answer to the interrogatories annexed on the part of said Baylor and others, as follows:

In answer to the first interrogatory: This deponent says, that he has frequently seen a paper purporting to be such bond as asked for and described in this interrogatory. It was in this deponent's hands, as counsel, before he brought this suit in chancery thereon, in the Bourbon circuit court, in the name of William Chiles, Thomas Boone, Hezekiah Boone, &c., against the heirs of said Hoy, for a title. On filing that bill, this deponent, as was his custom, filed the bond therewith, as an exhibit. Upon the coming in of an answer which made some objections to the genuineness of said bond, as the records will show, this deponent, as counsel, moved for leave to withdraw the original, upon the clerk's keeping an attested copy, for the purpose of having the depositions of the subscribing witnesses to the bond, and some of its assignments, taken, and gave directions accordingly. Afterwards, a sealed packet, directed to the clerk of the said circuit court, was put into the hands of this deponent, by William Chiles, one of the complainants, said to be the depositions required. This deponent, forthwith, carried said packet to the clerk's office, and requested the clerk, or his deputy, to open and file the depositions, according to the practice of the court, so that this deponent might have the opportunity of inspecting the depositions, and seeing whether they came up to what this deponent wished to be proved. This was accordingly done, and, upon examination, found the deposi-

tions every way satisfactory, and so informed Chiles, then present. The said bond was found in said packet, annexed to said depositions, and left by this deponent with them, in the custody of the clerk, believing them and the bond to be vitally essential to the cause. At the next, or some succeeding court, before the cause was tried, while court was sitting, it was suggested to this deponent, by Mr. Chiles, that a person who might have an interest in destroying the said bond, had been entrusted with the *with the* papers of said suit, at the back part of the court house, at a distance from the clerk's desk; and that, on their being returned, he, Chiles, could not find the bond, which gave him some alarm. This deponent immediately went to the desk, and examined the papers, and found said bond was not there, nor has he seen, or had any certain information of it since. To supply the loss, this deponent filed an amended bill, setting up the copy retained by the clerk, which this deponent then and still believes correct. This detail is given without having examined the record since the trial of said suit, and he refers to that to correct him, if mistaken, but ventures to speak thus much from recollection only. This deponent had never seen Hoy or Searcy, and had no personal knowledge of the execution of said bond, and no other way to form an opinion of its genuineness, but from information, and an acquaintance with several other papers purporting to be executed by Hoy in his life time. On the back of this bond was an assignment, purporting to be made by Hoy, together with some special stipulations relative to the land, to George Boone, and by George Boone to Thomas Boone; and next an erased or defaced assignment by George Boone, as agent for Thomas Boone, to John South, as their contents shewed. This deponent, before ever this original bond with its assignments was put into his hands, had seen a writing, purporting to be a copy, and this is all the deponent can state with regard to said bond.

In answer to the second interrogatory: This deponent has stated in answer to the first, the appearance of the erased assignment to John South. This deponent knows nothing of its genuineness, nor of South's possession of it, except from information, and he must say the same with regard to its having been obtained from South's papers since his death.

In answer to the third interrogatory: This deponent has seen a bond purporting to have been executed by John South, Walter Carr, and John Glover, perhaps to Peter Smeltzer, sen. but knows nothing of its execution, except by his knowledge of the hand writing of John South, and Walter Carr, with both of whom this deponent was acquainted, and had seen them write. South's name this deponent believed to be his writing. It purported to be for land out of Searcy's pre-emption, the date is not recollected, *the date is not recollected*, but a copy of the same paper appears on the records of the clerk's office of Bourbon county, as correct as this deponent by memory can speak. This deponent knows not where said bond is now, nor does he know of any assignments thereon. He knows nothing of the bond to Pope.

4. In answer to the fourth interrogatory: This deponent knows nothing of the sale of any land to Peter Smeltser or any other person, before December, 1791, or of a renewal of any

former contract in that month, and is wholly unacquainted with any first or prior contract, either personally or by information.

5. In answer to the fifth interrogatory: This deponent knows nothing personally of the first settlement of said land. In the year 1794, this deponent first came to Kentucky, and within a short time afterwards, say in two or three years, became acquainted with some of the family of Peter Smeltser; and sometime since 1804, this deponent became acquainted with their residence on said pre-emption of Searcy, and understood that they and Nicholas Smith claimed under John South. The first disturbance to their residence, known to this deponent, was an ejectment brought in the name of Hoy's heirs, in the Bourbon circuit court.

6. In answer to the sixth interrogatory: This deponent was not personally acquainted with Thomas Boone, who resided, as was said, in Pennsylvania, and of whom he has often heard. This deponent does not know of his being in Kentucky.

7. In answer to the seventh interrogatory: This deponent says that Paris, in Bourbon county, is situated by conjectural computation, without actual measurement, about five miles from the lines of Searcy's pre-emption, patented to Hoy, and is on the main limestone road, a county town, and site of justice for the county, and is a town of considerable business and information, and is supposed by this deponent to be about the fourth town in size in the State, commencing the count with the most populous village.

8. In answer to the eighth interrogatory: This deponent cannot tell the value of the lasting improvements made upon the land now held by George W. Baylor, Nicholas and Isaac Smith. It has been long since this deponent has been at them; they appeared, when he did see them, to be farms of considerable size, comparatively speaking; but any value fixed on them by this deponent now, could be little or no better than guess work.

9. In answer to the ninth interrogatory: This deponent says he is acquainted with Boon Ingles, esq., a citizen of said town of Paris, and has resided there many years, and exercises there the office of justice of the peace.

10. In answer to the tenth interrogatory: This deponent has been informed by Boon Ingles and others, that he claims an interest in said lands, by contract with his reputed uncle, Thomas Boone; but whether he ever stated to this deponent whether said interest was certain or contingent upon the event of this suit, or how great his interest was, this deponent does not recollect. This deponent remembers that he expressed a conviction that his uncle, Thomas Boon, was entitled to the land, and could recover it, notwithstanding his sale to Hezekiah Boone, and that his uncle had told him about it, and had written to him on the subject, and also suggested an intention of inquiring into the matter, and if he thought any thing could be made, he would see to it for his uncle, or acquire an interest in it. He was absent for some time from town. After this, and on his return, told this deponent that he had undertaken to investigate the claim for some interest, but at whose cost, this deponent does not remember, if it was told. He has also since said that he has brought, and is prosecuting the suit; and this deponent has no

doubt he is the active manager of the suit. This deponent never understood that Thomas Boone, before his death, had divested himself of all the interest he claims to the said Boon Ingles.

11. In answer to the eleventh interrogatory: This deponent states, that he is acquainted with John Smeltzer and Jacob Smeltzer, and has understood that Anna Maria Smeltzer was the wife of her cousin, or relative, also named John Smeltzer, and they are reputed to be children of Peter Smeltzer; but whether they were recognized by him, this deponent cannot say, not having had a personal acquaintance with their said ancestor.

Said deponent being also interrogated on cross-interrogatories, propounded in the name of Thomas Boone's heirs, deposes and says:—

1. In answer to the first interrogatory: This deponent says he was applied to as counsel, many years since, while in the practice of the law, by some of the family of Nicholas Smith, and perhaps by himself and some of the Smeltzers to bring suit for them, for the purpose of obtaining for them the legal title to the interest which they claimed in Searcy's pre-emption, patented in the name of Hoy. At this distance of time this deponent cannot be certain as to the names of the applicants, but remembers Peter Smith and either John or Jacob Smeltzer, and thinks, but is not certain, that Nicholas Smith had with this deponent some conversation on the subject. He, however, well remembers that the object was to obtain the title to that part of the land contained in the bond purporting to be signed by John South, Walter Carr, and John Glover, to Peter Smeltzer, described in the answer to the interrogatories of the defendants. This deponent brought no suit for them, and to state the reasons for declining it, without violating professional secrets, so far as those reasons rested on papers which are not secret in this suit, the chain of title between John South, whose bond they held, and Hoy, the patentee, was entirely defective. No authority known to this deponent then was produced, authorising George Boone to make the assignment on Searcy's bond to Hoy; and this deponent could discover no other claim, or color of claim, that South had to the land: hence, this deponent concluded he had sold it without claim, as his character, and former transactions of his, known to this deponent, induced him to believe.

2d. In answer to the second interrogatory: This deponent says that many years since, he brought an ejectment for said land, in the name of Hoy's heirs, in whom the legal title was supposed to remain, which was dismissed for the want of prosecution, the agent for Hoy's heirs and John L. Martin, who then claimed an interest in it, having failed to prepare it. This deponent afterwards brought a second ejectment, in the name of Hoy's heirs, and perhaps in the name of William Chiles as a co-lessor, which was prosecuted to judgment for the land against the tenants, but the writ of possession was never executed to the knowledge of this deponent, it being said that the tenants had purchased the land of Chiles, who claimed the half of the pre-emption; whether Chiles' name was in this ejectment or not, this deponent cannot certainly remember, but must refer to the record. If his name was left out, it was because his deeds of conveyance from some

of Hoy's heirs, which he obtained, was too late in date, compared with the ejectment. In this suit against the tenants by ejectment, Thomas Boone had nothing to do, so far as known to this deponent. It was brought before the suit in chancery before spoken of, in favor of Chiles and the Boones, against Hoy's heirs, for the legal title.

3d. In answer to the third interrogatory: This deponent says he was the counsel, as the record will show, who brought and conducted the chancery suit in the name of William Chiles, Thomas and Hezekiah Boone, against Hoy's heirs, for the legal title of one half of said settlement and pre-emption, in the name of Searcy, in which suit Chiles had the deepest interest, and was the most efficient client, as the record will testify. This deponent, in answer to this interrogatory, cannot be more explicit, least he should violate professional confidence in the management of suits, which is attempted, whether intentionally or not he cannot say, to be elicited by some of those interrogatories, on both sides, but which this deponent understands to be his duty not to disclose.

4. In answer to the fourth interrogatory: This deponent says that he ceased to be counsel of Chiles about the beginning of June, 1818, when this deponent left his practice at the bar for a seat on the bench; since then, this deponent has had no professional engagements with him in commencing and prosecuting or defending new suits. In all suits of his then depending, and previously undertaken, this deponent, knowing he could never adjudicate in any of them, continued to advise him, and procured a substitute to appear in the argument, as Mr. Chiles had then some suits depending chiefly for lands. The chancery suit of Chiles, Boone, &c. against Hoy's heirs, was one of the latter character. In this suit this deponent never had any engagements as counsel, nor in any other in the federal court, though he, previous to the time mentioned, acted as his standing counsel in the State courts of original jurisdiction. Chiles never did acknowledge to this deponent, in the present suit, that if it were not for the bonds formerly held by Smith and the Smeltzers, upon South, Carr, and Glover, he would make no defence in this suit, and would at once let a decree go in favor of the complainants. Boon Ingles, esq. who manages this suit, has before suggested to this deponent, that such was the confession or admission of Chiles, as detailed by this deponent; but in this he is unquestionably mistaken. The statements of Mr. Chiles was not with regard to this suit of Thomas Boone's heirs, but his statement was this, that the Smeltzers and Smith, to whom he had sold the land, being the tenants on it, had enjoined the purchase money, and sued him to rescind the contract in the State courts; that the price he was to get from them, was a sum of money not near the worth of the land; and also the bond which they held on South, Carr, and Glover, which bond he had since surrendered to the obligees, that if it were not for this bond being out of his power, so that he could not restore it to them, he would let them take a decree at once, rescinding the contract, as he could make more of the land. And it is this conversation, relative to another suit between Chiles and the ten-

ants, detailed by this deponent, which has been mistaken for this suit between Boone's heirs and Chiles, to which it had no relation.

5. In answer to the 5th interrogatory: This deponent has stated in an answer to a former interrogatory, on part of the defendants, what he knows with regard to the assignment to South, of the bond from Searcy to Hoy, whether any consideration was expressed in said obliterated assignment, this deponent does not remember. This deponent has seen a bond which appeared, by the signature of South, to be genuine, to Geo. or Thomas Boone, of equal date with the assignment of Searcy's bond, by George Boone to him, as well as this deponent remembers, binding him, South, to convey back the same quantity of land to Thomas Boone, which was specified in the bond of Searcy to Hoy, so that South appeared to have killed his assignment, if it was valid, by engaging at the same time, or near the same time, to convey back all he acquired. This deponent has, since this suit commenced, seen a writing, purportng to be a letter of attorney from Thomas to George Boone; but it is the same said to be filed in this suit, as an exhibit, and its terms will show whether it authorized Geo. Boone to assign or convey to South by Thomas Boone.

6. In answer to the 6th interrogatory: This deponent says, that Wm. Chiles has not told him since the pendency of this suit that the complainants should not, if he could help it, obtain a trial of this suit for five or six years. The only thing that could have given color to the question, is the following: Chiles conversed with this deponent relative to the sanguine manner in which Boon Ingles, esq., who conducts the suit, expressed himself that he would have a decree in a few months, like a judgment on a speciality in a State court. At this extraordinary expectation of Mr. Ingles, Chiles in a conversation with this deponent, seemed to amuse himself, saying that Ingles was a raw hand at the business, and that he was so far mistaken as to the progress of a suit in chancery, in this court, through the rule docket; and then on a crowded issue docket, when the court sat but seldom, he Chiles could rest for several years, perhaps five or six, and then be time enough to meet him. The same remarks as to Mr. Ingles' sanguine expectation of trial in haste, this deponent has made himself; on the contrary, when Chiles spake seriously of the suit, he stated, that he did not deem it necessary to prepare until Mr. Ingles took his depositions, and that so soon as that was done, he, Chiles would take his and give him battle speedily, alleging that he was entitled to the land, and as he had not paid for it all to Hezekiah Boone, he was willing to pay for it to Thomas, if, on the investigation between Thomas and Hezekiah, it should appear that the former had not received payment; which Chiles seemed to believe he had.

As to the bond and assignments enquired after in the latter part of this interrogatory, this deponent has stated in answer to the first interrogatory, on part of the defendants, all he knows on that subject. B. MILLS.

The foregoing answers to all the interrogatories of the parties, given by said witness in the suit aforesaid, before me, at the time and place in the preamble stated. Given under my hand, as a

justice of the peace, for Bourbon county, Kentucky, this 7th day of April, 1826.

HENRY TIMBERLAKE.

Here follows the appeal bonds, executed by the parties to this cause. And first, the appeal bond executed by the defendants, viz:

[*Appeal bond executed by defendants.*]

Know all men, by these presents, that we, Wm. Chiles, Jacob Smeltser, Nicholas Smith, Jacob Smith, America Cummins, Caroline Cummins, Joseph Steele, Mariam Steele, *Mariam Steele*, Jones Hoy, Fanny Hoy, John Newland and Celia his wife, late Celia Hoy, Hugh Brown, John Evault, Joseph Henry Bledsoe and Mary Jane Bledsoe his wife, late Mary Jane Baylor, George Anne Baylor, Walker R. Baylor, and Sophia Baylor, the said George Ann, Walker R., and Sophia, by William M. Baylor, their guardian, John South, Thomas D. South, Margaret South, Elgiva South, David Hudson, Amos Baker, Moses Davidson, James Easin, Adam Rodgers, Josiah Boone, Hezekiah Boone, and John Shawhan, are held and firmly bound unto Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, William Boone, and Thomas Boone, heirs of Thomas Boone, deceased, in the penal sum of two thousand dollars, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 24th day of May, 1834.

The condition of the above obligation is such, that whereas, the above bound William Chiles and others, have prayed for, and obtained an appeal from the seventh circuit court of the United States of America, in and for the Kentucky district, pronounced at the present May term, 1834, wherein said Boones were complainants, and said Chiles, &c., defendants.

Now, if the said William Chiles, Jacob Smeltser, Nicholas Smith, Jacob Smith, America Cummins, Caroline Cummins, Joseph Steele, Mariam Steele, Jones Hoy, Fanny Hoy, John Newland and Celia his wife, late Celia Hoy, Hugh Brown, John Evault, Joseph Henry Bledsoe and Mary Jane Bledsoe his wife, late Mary Jane Baylor, George Ann Baylor, Walker R. Baylor, and Sophia Baylor, the said George Ann, Walker R., and Sophia, by William M. Baylor, their guardian, John South, Thomas D. South, Margaret South, Elgiva South, David Hudson, Amos Baker, Moses Davidson, James Easin, Adam Rodgers, Josiah Boone, and Hezekiah Boone, shall prosecute the said appeal with effect, or on failure thereof, pay such costs as the said complainants have heretofore incurred in the prosecution of said suit, or that may be incurred in the defence upon said appeal, and such damages as they may sustain, by reason of the prosecution of said appeal; then the above obligation to be void, otherwise to remain in full force and virtue.

[SEAL.]
[SEAL.]

Witness: JOHN SHAWHAN, [SEAL.]
JNO. H. HANNA.

[*Appeal bond executed by complainants.*]

Know all men by these presents, that we, Sarah Boone, Lincoln Boone, Richard Boone, Rebecca Boone, Jeremiah Boone, Daniel Boone, Mary Ann Boone, William Boone, and Thomas Boone, and Boone Ingles, are held and firmly bound unto William Chiles, Jacob Smeltzer, Nicholas Smith, Jacob Smith, America Cummins, Caroline Cummins, Joseph Steele, Mariam Steele, James Hoy, Fanny Hoy, John Newland, and Celia his wife, late Celia Hoy, Hugh Brown, John Evault, Joseph Henry Bledsoe, and Mary Jane Bledsoe, his wife, late Mary Jane Baylor, George Ann Baylor, Walker R. Baylor, and Sophia Baylor, John South, Thomas D. South, Margaret South, Elgiva South, David Hudson, Amos Baker, Moses Davidson, James Easin, Adam Rogers, Josiah Boone, and Hezekiah Boone, in the penal sum of five hundred dollars, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 19th day of November, 1834.

The condition of the above obligation is such, that whereas the above bound Sarah Boone, &c., have prayed for and obtained an appeal from a decree of the seventh circuit court of the United States of America, in and for the Kentucky district, pronounced at the May term of said court, in the year 1834; wherein said Sarah Boone, &c. were complainants, and said William Chiles, &c. were defendants. Now if the said Sarah Boone, &c. shall prosecute the said appeal with effect, or on failure thereof pay such costs as may be awarded against them, then the above obligation to be void, otherwise to remain in full force and virtue.

BOONE INGLES, [L. S.]

Test:

JOHN R. GRAHAM.

nited States of America, 7th circuit, Kentucky district, sct.

I, John H. Hanna, clerk of the seventh circuit court of the United States of America, in and for the Kentucky district, do hereby certify, that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the suit aforesaid.

In testimony whereof, I have hereunto subscribed my [SEAL.] name, and affixed the seal of said court this 12th day of December, 1834.

JNO. H. HANNA.